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## THE CITY OF SAN DIEGO

## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

**Date Issued:** October 8, 2007**IBA Report Number:** 07-95**City Council Docket Date:** October 15, 2007**Item Number:** N/A**Subject:** Tourism Marketing District**OVERVIEW**

The proposed Tourism Marketing District (TMD) would establish a program whereby certain lodging facilities within the City would self-impose a special assessment in order to secure a source of revenue for marketing and promotional programs. The assessment would be two percent of the daily room rate charged at hotels with 70 or more rooms, or 2.0-cents on every dollar. This assessment would be comparable in nature to the City's 10.5-cent Transient Occupancy Tax (TOT); however, revenue from the TMD assessment would be managed by the San Diego Tourism Promotion Corporation (SDTPC), a private non-profit entity, and would be allocated to various organizations and entities for marketing and promotion of the City based on a competitive application process.

The TMD is designed to benefit the lodging industry by providing a secure revenue source for marketing and promotion; however, it may also provide benefits for the City of San Diego. The primary and long-term benefit to the City is expected to be greater TOT receipts as a result of a strengthened tourism market. In addition, the TMD may also provide a more immediate benefit by alleviating current TOT allocations to various tourism-related organizations.

IBA report 07-47 (attached) posed a range of policy implications regarding establishment of the TMD. This report analyzes the potential benefit of the TMD for the City of San Diego, and highlights a few concerns with the TMD Management Plan. Overall, implementation of the TMD is expected to generate higher TOT receipts as a result of a stronger tourism market, and create savings by offsetting current TOT allocations. However, it is unclear how much the City will actually benefit in terms of greater TOT receipts, as such estimates are extremely difficult to quantify. In terms of the immediate

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benefit, the TMD may potentially free up more than \$10 million on an annual basis, which could benefit the General Fund. However, current Municipal Code provisions regarding TOT allocations may restrict those savings unless amendments to the Municipal Code are made.

## FISCAL/POLICY DISCUSSION

This section begins with a discussion of the primary and longer-term financial benefit to the City as it relates to increased TOT receipts. The second part analyzes the immediate savings that may result from offsetting current TOT allocations. Finally, several policy concerns with the proposed TMD Management Plan itself will be addressed.

However, in order to get a sense of magnitude, it is helpful to first take a look at the City's TOT revenue and the amount of revenue that may be generated by the 2.0-cent TMD assessment, projected over a five-year period. Total budgeted TOT revenue in FY 2008 is \$162.6 million. Based on this projection, the 2-cent TMD assessment would generate approximately \$29 million in FY 2008 if the TMD were implemented for the entire fiscal year<sup>1</sup>. The table below provides a five-year projection of the City's TOT revenue and the proposed 2.0-cent TMD assessment, as well as a projection of how much revenue the City would receive if the TOT rate were increased by 2.0-cents.

Table 1. Five-Year TOT Projection

	FY 2008 Budget	FY 2009 Projected	FY 2010 Projected	FY 2011 Projected	FY 2012 Projected	FY 2013 Projected
City TOT*	162,625,767	170,757,076	179,294,930	188,259,677	197,672,661	207,556,294
TMD 2-Cent	28,962,878	30,411,022	31,931,573	33,528,152	35,204,560	36,964,788
City 2-Cent	30,976,340	32,525,157	34,151,415	35,858,986	37,651,935	39,534,532

\* Assumes 5% growth rate in all future years.

In the above projection, City TOT revenue is assumed to grow by five percent in each year, consistent with the Mayor's Five-Year Financial Outlook. As the table shows, even with this modest growth rate, the 2-cent TMD assessment would generate nearly \$37 million by 2013. If the City were to increase the TOT rate by 2.0-cents, it would generate approximately \$39.5 million. The TMD assessment would generate slightly less revenue than a commensurate increase in the TOT rate since only hotels with 70 rooms or more will be subject to the TMD assessment.

<sup>1</sup> If the current proposal is implemented, assessment would not begin until January 2008, thereby reducing the amount of revenue generated in FY 2008. However, for purposes of simplicity, this analysis assumes full-year implementation.

**Primary TMD Benefit: Increased TOT Receipts**

The purpose of the TMD is to provide a secure source of revenue for the marketing and promotion of the City. Currently, the vast majority of funding for marketing and promotion of the City comes from City TOT allocations, via the Special Promotional Programs budget. However, these allocations have been gradually cut back over the past several years due to General Fund budgetary constraints. Revenue generated from the TMD assessment would not be impacted by the City's budget, and therefore would be a more stable revenue stream for tourism marketing and promotion. In addition, the proposed assessment would generate significantly more revenue for these purposes than is currently being allocated by the City.

There is little question that increasing the amount of funding for marketing and promotion will strengthen the City's tourism and lodging industries, which in turn would provide greater TOT receipts for the City. The more pertinent question in this instance is by how much. Unfortunately, the impact of marketing dollars on TOT receipts is very difficult to quantify, and there does not appear to be any conclusive studies regarding the impact of tourism marketing districts, which are relatively new phenomena. In addition, academic research on the effectiveness of tourism marketing expenditures is limited. A brief review of the available academic literature does indicate that funding for destination marketing increases market share and has a positive return on investment. However, none of the studies reviewed were similar enough in scope to the present situation to offer conclusive guidance.

There are many factors that drive the choice of destination for travelers, such as local attractions, recreational opportunities, general economic conditions, visitor age and income, transportation costs and available alternatives. While marketing is surely one of these factors, it is very difficult to isolate its impact from that of the many others. Further research on the marginal impact of tourism marketing expenditures, and the point at which such expenditures hit diminishing returns would be beneficial.

Despite the lack of conclusive data on the impact TMDs or tourism marketing expenditures have on tourism, it is intuitive to believe that greater marketing expenditures will have a positive impact. What is clear is that implementation of the TMD will provide greater funding to the lodging industry for marketing and promotion of San Diego. A greater marketing effort will presumably result in stronger tourism and lodging industries, and benefit the City in terms of greater TOT receipts. From a policy perspective, this impact should be the prime motivation behind implementing the TMD.

**Immediate Benefit: Special Promotional Program Savings**

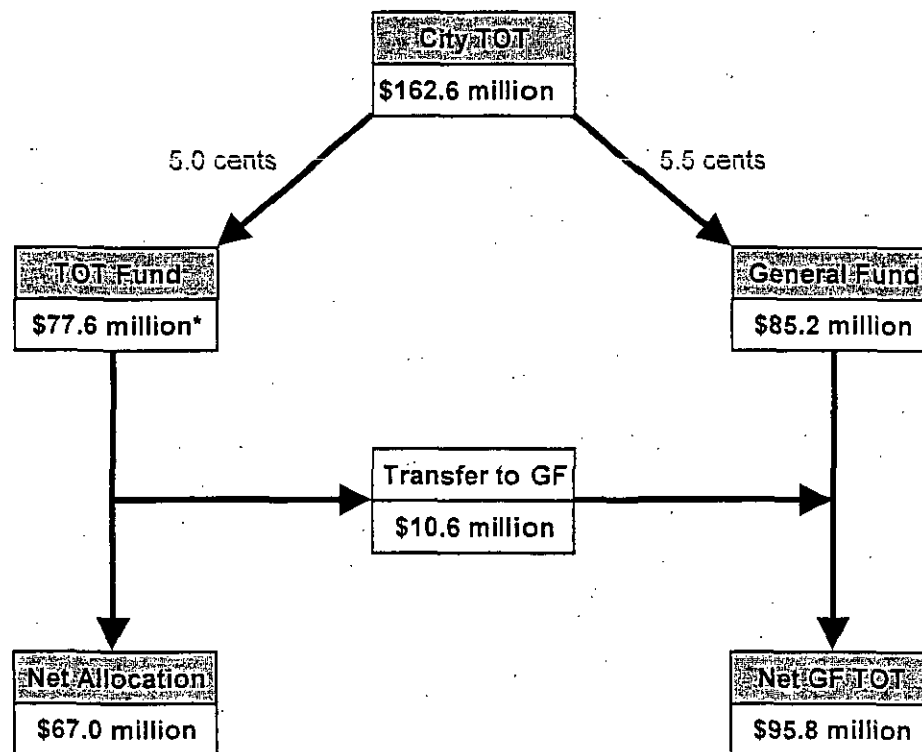
Analysis of the potential immediate benefit of the TMD is broken into two parts: first, a description of how the City's TOT revenue is allocated via the Special Promotional

Program, and how the City may realize short-term benefits from the TMD; and second, a discussion of how the potential short-term benefits may conflict with the Municipal Code.

#### TMD and Special Promotional Programs

The City's TOT revenue is allocated partially to the General Fund and partially to the TOT Fund to support the Special Promotional Programs (Special Promo) budget. The General Fund receives 5.5-cents of the 10.5-cent TOT levy, while Special Promo receives 5.0-cents. In FY 2008, Special Promo is budgeted to allocate approximately \$77.6 million out of the TOT Fund. Of that total allocation, \$10.6 million is returned to the General Fund, for general government purposes such as public safety, parks and libraries. The remaining funding is then allocated to various non-profit community groups, for debt service and to various other tourism-related organizations. In FY 2008, these allocations total \$67.0 million. The allocation and flow of City TOT revenue is reflected in the figure below.

Figure 1. City TOT Revenue (FY 2008 Budget)



\* Includes other minor revenues

The proposed TMD would provide funding for certain tourism-related groups that are currently funded through this \$67.0 million Special Promo allocation. These groups, and their FY 2008 allocations, are listed below.

Table 2. TMD-Funded Groups

SD Convention & Visitors Bureau	\$ 8,830,411
SD Film Commission	661,817
Holiday Bowl	391,137
San Diego North ConVis	380,903
SD Intl Sports Council	145,800
Hall of Champions	75,000
Rock N Roll Marathon	19,519
California State Games	15,427
San Diego Crew Classic	4,648
<b>TOTAL</b>	<b>\$ 10,524,662</b>

The TMD, if implemented, would initially assume funding for these groups, thereby alleviating the City's current funding obligation. This could result in an annual saving of approximately \$10.5 million, which could be transferred back to the General Fund. However, it should be noted that in order to maintain this level of savings no further discretionary TOT allocations, or increases to any remaining allocations, can be made<sup>2</sup>.

In addition, while the TMD guarantees funding to ConVis and North ConVis, funding for the other groups listed above would only be guaranteed for the first 12 months of operation (January – December, 2008). After that, those groups could apply for TMD funding according to the competitive application process. Should these groups not receive TMD funding, they may again seek funding from the City, which would decrease the potential savings if such funding is restored.

The table below reflects both the guaranteed savings that may be generated by implementation of the TMD, as well as the potential maximum savings. The guaranteed savings reflect the fixed TMD allocations to ConVis and North ConVis, as well as the committed funding for the other groups for the first 12 months of operation.

Table 3. Potential Savings from TMD

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
<b>Guaranteed</b>	5,262,331	9,867,988	9,211,314	9,211,314	9,211,314	4,605,657
<b>Maximum</b>	5,262,331	10,524,662	10,524,662	10,524,662	10,524,662	5,262,331

<sup>2</sup> This refers only to discretionary allocations. Allocations for debt service may increase over time; however, these allocations are not discretionary, and would occur regardless of the TMD.

The lower amounts in FY 2008 and FY 2013 reflect partial fiscal year savings, since the TMD is currently scheduled to be implemented beginning January 1, 2008 and last for a term of five years. However, the TMD may be extended for a longer term, which may increase the potential savings in FY 2013 and beyond. Again, it should be emphasized that the maximum potential savings as reflected in Table 3 would only be realized if no further discretionary TOT allocations are made or increased, and if current City allocations to the groups listed in Table 2 remain fully offset for the term of the TMD.

It should also be noted that while revenue from the TMD assessment will grow year over year, the maximum potential savings to the City would not increase, regardless of how much TOT revenue the City brings in. This is because it is only the *current* allocations to the groups listed in Table 2 that would be offset; it is not anticipated that any remaining allocations would be offset by the TMD in future years.

#### Municipal Code Restrictions

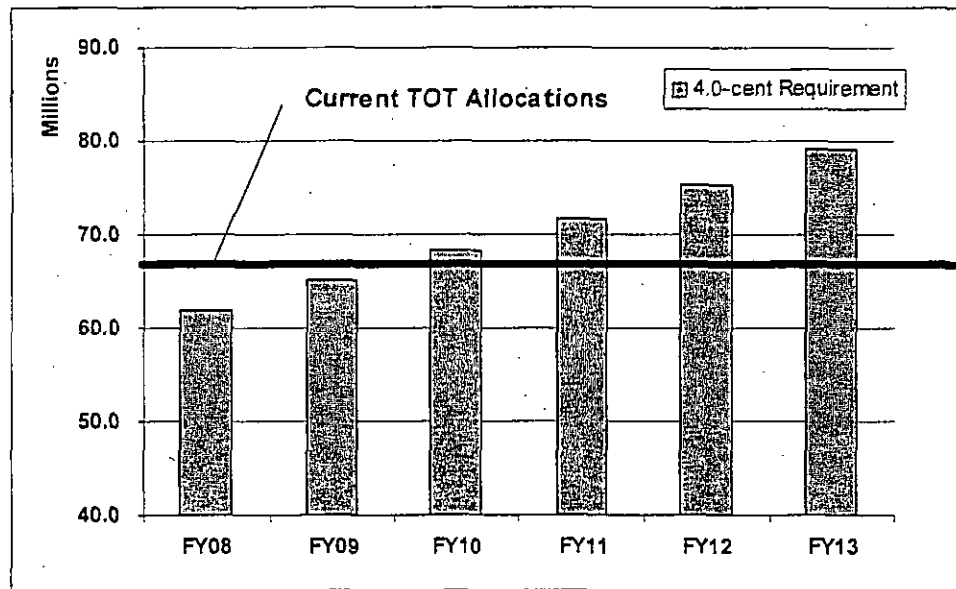
One of the complicating factors regarding these potential savings is the restriction placed on the use of City TOT revenue by the Municipal Code. Currently, the Municipal Code requires that 4.0-cents of the 10.5-cent TOT be used for the purpose of promoting the City. In previous years, TOT allocations were significantly large to easily comply with this requirement. However, due to the rapid growth in TOT revenue over the past several years, combined with reduced allocations, the 4.0-cent requirement may limit the amount of revenue that can be transferred back to the General Fund, and thus negate the potential savings in the Special Promotional Program.

Figure 1 (pg. 4) shows that the net TOT allocations in FY 2008 are \$67.0 million. It is presumed that the TMD would reduce these allocations by an additional \$10.5 million. However, based on budgeted TOT revenue in FY 2008, 4.0-cents of TOT is approximately \$62.0 million.

This means that the City could only reduce TOT allocations by approximately \$5 million in FY 2008 in order to stay in compliance with Municipal Code requirements. As TOT revenue grows in future years, the amount of funding required by the 4.0-cent requirement will grow as well. The chart below reflects current net TOT allocations in contrast to the 4.0-cent requirement.

**What is "Promotion"?** In the past, there has been a flexible and somewhat vague notion of what constitutes promotion. Special Promotional Programs allocates TOT funding to groups that are clearly promotion-related, such as ConVis, but also for other purposes such as debt service on the PETCO Park bonds. Other activities such as park and beach maintenance have a nexus with promotion since visitors often come to San Diego to enjoy these resources, but are funded by the General Fund. In order to maximize the benefit of the TMD to the City, it may be necessary to clarify what constitutes promotion.

Figure 2. TOT Allocations v. 4.0-cent Requirement



The space between the solid line – reflecting current net TOT allocations – and the bars representing the 4.0-cent requirement is the potential savings for the City in each fiscal year, under current law. As the chart reflects, TOT allocations could only be reduced in FY 2008 and FY 2009, which may limit the amount of savings in those years. By FY 2010, even without the TMD, the City may need to *increase* TOT allocations in order to comply with the Municipal Code.

To realize the maximum potential savings in the Special Promotional Program as a result of the TMD and still comply with Municipal Code requirements, the City may need to more clearly define what constitutes promotion to include services that are currently funded by the General Fund. Services such as park and beach maintenance and lifeguard services, which are currently funded by the General Fund, would seem to have a clear nexus with tourism and promotion, as many visitors benefit from these resources. It is recommended that the City Attorney's Office examine this issue to determine what steps may need to be taken in order to realize maximum potential savings while still complying with the Municipal Code.

#### **TMD Management Plan – Policy Implications**

The TMD Management Plan is the key document detailing the administrative and operational guidelines for the proposed assessment district. It is also an informational document that participating lodging businesses will rely upon in deciding whether to support or oppose the proposed district. The City's role in supporting and administering the TMD are described in the Management Plan.

The Management Plan and a contract between the City and SDTPC are the controlling documents for TMD operation over the next five calendar years. The IBA has reviewed the TMD Management Plan and found it to be generally comprehensive and reasonable. There are, however, a few items that might warrant clarification, discussion or further consideration prior to adoption. These items are listed below, and may be addressed with minor amendments to the Management Plan or by incorporation in the subsequent contract with SDTPC.

- Page 5 indicates that the City will annually provide the SDTPC a statement detailing actual TOT revenues collected and describing the City's use of TOT revenues as it relates to the 4.0-cent Municipal Code requirement, including the "annual marketing subsidy as required by the San Diego Convention Center Corporation." It should be noted, however, that the annual marketing subsidy provided to the Convention Center Corporation is not required, but granted at Council's discretion in response to an application for funds submitted by the Corporation. The IBA suggests that the word "required" be changed to "requested."
- To ensure compliance with the Management Plan and to gauge the effectiveness of the TMD, the IBA recommends that the SDTPC annually provide the City with a summary of expenditures from the prior fiscal year, and the actual or expected return on investment associated with those expenditures.
- The Management Plan specifies that the City may be reimbursed for TMD administrative costs up \$300,000 plus a 4.5% annual escalator. While this amount should be sufficient to reimburse the City for all normal expenses related to the TMD, it may not cover extraordinary or unforeseen costs. The IBA recommends that a provision be included in either the Management Plan or the subsequent contract with SDTPC that clarifies who will be responsible for covering the cost of extraordinary or unforeseen expenditures, including but not limited to possible legal proceedings.
- As previously described in this report, certain longstanding TOT recipient organizations (those marked with asterisks on page 13 of the Management Plan) are anticipated to receive funding from the TMD for the first 12 months of operation. Thereafter, these organizations can apply for additional funding from the TMD in accordance with the competitive application process described in Attachment 1 of the Management Plan. While City staff has indicated that these groups are guaranteed funding for the first 12 months, this provision is not written anywhere in the Management Plan. The IBA recommends that the funding commitment to these organizations be written into the Management Plan, as is the longer-term commitment to ConVis and North ConVis.



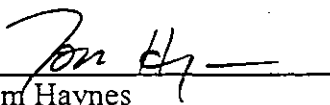
- Page 16 discusses City Treasurer administered penalty and appeal processes for TMD businesses failing to make timely payments. However, it is unclear whether the revenue from such penalties would go to the TMD or be retained by the City. The IBA recommends that the Management Plan clarify who retains the revenue from penalties.

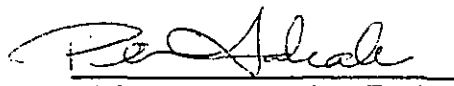
## CONCLUSION

Implementation of a Tourism Marketing District may have potential benefits for the City of San Diego. The primary and long-term benefit would be increased TOT revenue as a result of greater marketing and promotion efforts, as the TMD would secure greater funding for these purposes. However, this benefit is very difficult to quantify. While it may safely be presumed that increased funding for marketing and promotion will strengthen the tourism and lodging industries and lead to higher TOT receipts, the precise relationship between increased marketing expenditures and TOT revenues is unknown.

The TMD may also provide an immediate benefit by offsetting several TOT allocations currently made by the City. If maintained, these offset allocations may result in potential savings of up to \$10.5 million per year. However, this level of savings assumes no further discretionary TOT allocations or increases to any remaining allocations. It also assumes that none of the groups initially funded by the TMD return to the City for funding in future years.

Finally, the Municipal Code currently requires that 4.0-cents of the 10.5-cent TOT be used for promotion of the City. This requirement may limit the potential savings that may result from implementation of the TMD. In order to realize the maximum potential savings, it may be necessary to clarify what constitutes promotion to include services currently funded by the General Fund, such as park and beach maintenance and lifeguard services.

  
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APPROVED: Andrea Tevlin  
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Attachment

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# **SAN DIEGO TOURISM MARKETING DISTRICT MANAGEMENT PLAN**

**September 2007**

*Developed by a coalition of lodging business owners and managers  
representing the San Diego County Hotel Motel Association  
and the San Diego Lodging Industry Association.*

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## **OVERVIEW AND EXECUTIVE SUMMARY**

Conceived and developed by a coalition of lodging business owners and managers representing the San Diego County Hotel Motel Association and the San Diego Lodging Industry Association, the San Diego Tourism Marketing District (District) is a benefit assessment district proposed to improve tourism activity and hotel room night consumption in the City of San Diego.

### **History**

As a result of diminishing public resources available for effective and competitive destination marketing, local lodging industry leadership began discussing alternative funding sources and available options over 5 years ago. Since that time, a working group comprised of lodging industry representatives has held dozens of meetings with proposed assessed businesses, stakeholder groups and interested parties. On May 8, 2007 the San Diego City Council adopted an enabling Procedural Ordinance that allows for the creation of a Tourism Marketing District. Herein, representatives of the San Diego Lodging Industry have taken steps to formalize a District Management Plan in hopes of gaining industry support to form the proposed District.

### **Location**

The Proposed Tourism Marketing District will be citywide, inclusive of all areas within the city limits of the City of San Diego. There are no benefit zones proposed within the District. A map of the District is included in this Plan as Appendix A.

### **Assessed Businesses**

The assessment is proposed to be levied upon the owner(s), operator(s), or an authorized representative who is noted on City records as the responsible party for the remitting and reporting of Transient Occupancy Tax for each lodging *business* of 70 or more sleeping rooms in the City of San Diego. *Business* means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by *transients* for dwelling, lodging or sleeping purposes. *Transient* has the same meaning as in Municipal Code section 35.0102.

The assessment imposed is levied solely upon the lodging businesses within the district. The business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that said portion shall be specifically called out and identified for the transient in any and all communications from the business owner as a "San Diego Tourism Marketing District Assessment."

### **Method & Basis of Levying Assessment**

The annual assessment is based upon 2% of gross room revenue from transient stays for lodging businesses with 70 or more sleeping rooms operating within the City of San Diego. The rate of 2% will remain fixed for the duration of this District. Certain room revenue will be exempt from assessment.

### **Budget**

The District budget for the first six months of collections and disbursements is estimated to be approximately \$14.2 million and \$29.2 million for the first 12 months.

### **Activities**

Revenue generated from the assessment will fund marketing programs to increase tourism and promote the City of San Diego as a tourist, meeting, convention and special event destination.

### **Formation**

District formation requires submittal of petitions in support from lodging businesses representing more than 50% of the total annual assessment. After City staff verifies the petitions the matter goes to the City Council. The City Council will then require that a ballot be mailed to all affected hotels with the returns to be counted by the City Clerk. The City Council will then hold a hearing and be advised of results of the ballot count. The Council shall not establish the District nor shall it impose an assessment if there is a majority protest. A majority protest exists if ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected businesses. In the absence of a majority protest the Council may proceed with establishing the District by resolution.

### **Management & Oversight**

The implementation of this District Management Plan will be the responsibility of the Board of Directors of the San Diego Tourism Promotion Corporation (SDTPC), a private non-profit entity composed exclusively of the assessed lodging businesses. Only business owners or owner's representative paying the tourism district assessment have the right to vote in annual elections of the association. And only business owners or owner's representative paying the tourism district assessment have the right to seek nomination or election to the board of directors of the association. Oversight is provided by the City to ensure that the expenditure of funds is consistent with the District Management Plan.

### **Proposed Timing and Duration of Activities**

The District will begin operations January 1, 2008 or at a later date set by the City Council. Assessed businesses will be responsible for calculating the assessments beginning on the start-up date set by the City Council. Assessed businesses will be required to remit the assessment on a monthly basis beginning 45 days after the effective start date of the District. The District Management Plan is a five (5) year plan and will terminate with the expiration of the District. Each activity of the District will have its own schedule, but none will last longer than the duration of the District. After five years, hotel business owners may petition the City to extend the district for an additional 10 years subject to the requirements of the Tourism Marketing District Procedural Ordinance SDMC Section 61.2501 et seq.

## **WHAT IS A TOURISM MARKETING DISTRICT (TMD)?**

The San Diego Tourism Marketing District follows the model of successful Tourism Business Improvement Districts (BID's) that utilize the efficiencies of private sector operation in the market-based promotion of local and regional tourism. Tourism BID's, such as the proposed SDTMD allow lodging and other tourism-related business owners to organize their efforts to increase tourism. In San Diego, lodging business owners within the district will assess

themselves in order to fund the District and those funds will be used to provide programs and services that specifically benefit the assessed lodging businesses.

**San Diego Tourism Marketing District funded programs and services may include, but are not limited to:**

- Marketing of the Area
- Tourism Promotion Activities
- Special Events and Programs

In California, Tourism BID's, such as the TMD, are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law), the Parking and Business Improvement District Law of 1989 (BID Law), or by ordinance of a Charter City. The local lodging businesses have chosen to ask the City of San Diego to create an enabling (procedural) ordinance modeled on the 1994 PBID Law. This State statute and the City ordinance allow for the establishment of an assessment district to raise funds within a specific geographic area; in this case the City of San Diego, for the purpose of promoting tourism and hotel room occupancy.

**There are many benefits to Tourism BID's:**

- Funds must be spent to benefit those who pay;
- Funds cannot be diverted for other government programs or expenditures;
- Tourism BID's are customized to fit the needs of each tourism district;
- Tourism BID's allow for a wide range of services;
- Requires petition support from lodging businesses paying over 50% of the annual proposed assessments (1994 PBID Law);
- Provides a stable funding source for tourism promotion.

**The San Diego Tourism Marketing District will NOT fund:**

- The acquisition, construction, installation or maintenance of any tangible property, including parking facilities, parks, planting areas, fountains, benches, booths, kiosks, display cases, pedestrian shelters, signs, trash receptacles, public restrooms, ramps, sidewalks, plazas, pedestrian malls, lighting and heating facilities.
- The closing, opening, widening or narrowing of existing or new streets.
- Facilities or equipment, or both, to enhance security and safety of persons and property within the area, unless included in a specific proposal to benefit the assessed businesses.
- Regular public safety and security personnel and programs, maintenance and repair, sanitation, nor other municipal services normally and historically provided by the City to the area.
- Expenditures not consistent with the terms of this District Management Plan.

**City's Promotional Responsibilities**

As provided in the San Diego Municipal Code section 35.0128 the original 4% Transient Occupancy Tax, which was approved by San Diego voters, will continue to be used to promote the City.

To this end, the City will provide the SDTPC, on an annual basis, a statement detailing actual TOT revenues collected under Code section 35.0103 that are available for promoting the City. This statement will also describe the prescribed use of revenues from the City's TOT to include, but not be limited to:

- The annual debt payment for all existing bond obligations related to the San Diego Convention Center Corporation;
- The annual marketing subsidy as required by the San Diego Convention Center Corporation; and
- The annual debt payment for all existing bond obligations relative to Balboa Park and Mission Bay Park.

**TOURISM MARKETING DISTRICT ADMINISTRATION****CITY ADMINISTRATION AND OVERSIGHT**

City requires petitions to be submitted to the City in support of establishing the TMD in accordance with SDMC 61.2501 et seq. If sufficient petitions are submitted in support of the proposed district then City Council shall adopt a Resolution of Intention to establish the district and shall cause a ballot to be mailed to all affected businesses and give notice of the required public hearing. If there is no majority protest then the City Council shall adopt a Resolution establishing the district and shall authorize the levying of assessments for a period of five (5) years.

The City of San Diego will oversee the collection of the assessments and will ensure that the expenditure of funds is consistent with the District Management Plan.

Initially, the City proposes to retain no more than \$300,000 of TMD assessments on an annual basis, pro-rated at the establishment of the District and adjusted thereafter at the beginning of each fiscal year, to reflect an automatic annual escalator of 4.5%. These funds will be used to cover the costs of the City's administration of the District, as follows:

- City Planning & Community Investment Department - Economic Development Division Agreement monitoring and reimbursement of expenditures and coordination of annual City Council process.
- Office of the City Treasurer  
Processing and reporting of assessments remitted and auditing of reported/remitted assessments.

- Office of the City Auditor and Comptroller  
Approval of direct payments and issuance of checks and auditing of agreement between City and the "tourism marketing district association".
- Office of the City Attorney  
Preparation of resolutions and other documents required for annual City Council process and review and preparation of documents for administration of the District.

Prior to the beginning of each Fiscal year, the City Council shall consider, in an open meeting, the proposed services and activities for the fiscal year as presented in the annual District Management Plan.

## **SAN DIEGO TOURISM PROMOTION CORPORATION ADMINISTRATION**

The enabling Procedural Ordinance provides that the City will contract with a designated nonprofit corporation to implement a plan and carry out specified activities, subject to the terms and conditions enumerated in the contract with that nonprofit. The City proposes to contract with the San Diego Tourism Promotion Corporation (SDTPC), a private, non-profit corporation, to serve as the San Diego Tourism Marketing District Association to manage the District assessments and to contract for implementation of the proposed marketing programs and services as outlined in the District Management Plan.

### **Purpose**

The specific purpose of this private, non-profit corporation is to create a positive economic, fiscal and employment impact on lodging businesses in the City of San Diego through the effective and judicious allocation of its revenue and resources to measurably successful tourism promotion, marketing and advertising programs.

### **General Powers**

Subject to the provisions and limitations of the California Nonprofit Mutual Benefit Corporation Law and any other applicable laws, and subject to any limitations of the articles of incorporation or bylaws, the corporation's activities and affairs shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors.

### **Board of Directors**

Only business owners or business owner's representatives paying the tourism marketing district assessment have the right to vote in annual elections of the association. And only business owners or business owner's representatives paying the tourism marketing district assessment have the right to seek nomination or election to the board of directors of the association. The Board of Directors shall consist of nine (9) directors unless changed by amendment to the bylaws of the corporation.

Board members, officers and members of the association are intended and understood to represent and further the economic interest of the City's tourism industry. Board members or officers have a fundamental duty to advance the general welfare of the tourism industry in San Diego.



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**Initial Directors:** The initial Board of Directors shall be appointed by the Incorporator of the Corporation, and shall serve for staggered terms of one, two or three years. At the first duly constituted meeting of the Board of Directors, the initial Board members shall draw lots to determine their individual term. It is anticipated that the initial Board of Directors will consist of (In alphabetical order):

Luis Barrios, Hacienda Hotel Old Town  
Richard Bartell, Bartell Hotels  
C. Terry Brown, Atlas Hotels  
Patrick Duffy, Hilton La Jolla Torrey Pines  
Bill Evans, Evans Hotels  
Mohsen Khaleghi, Hyatt Regency Mission Bay Spa & Marina  
Bob Rauch, Homewood Suites  
Joe Terzi, Starwood Hotels  
Ray Warren, Marriott Hotels

### **Board Nominations & Elections**

Elections to the Board of Directors will be held annually beginning at the end of the first full fiscal year of operation for the Corporation. A call for self-nominations will occur annually and all self-nominees will be listed on the ballot for Board elections. In addition to, or in the absence of, self nominations, the Nominations Committee of the Board may put forth a slate of nominees at each election.

The procedure for nominations and elections, including the timing for nominations, and the protocol for the distribution and collection of ballots, will be defined in the Bylaws of the Corporation. SDTPC anticipates retaining a third-party contractor to administer, count and report the results of the balloting for Board elections.

### **Board Officers**

Officers of the Board of Directors shall be elected by a majority vote of the Board at the first regularly scheduled meeting of the Board, following the seating of new Board members.

### **Board Standards and Conduct**

The San Diego Tourism Promotion Corporation will be organized as a 501(c)6, mutual benefit corporation, and will have as its purpose the management of the resources of the San Diego Tourism Marketing District. The primary measure of the success of the Corporation will be the benefit it delivers to the assessed businesses. Because the delivery of a measurable benefit to the assessed businesses is required by law, and is the primary legal purpose of the Corporation, it is recognized that members of the Board of Directors, through their assessed businesses, will receive benefit from the activities of the SDTPC.

In addition, State law provides, and the City's enabling Procedural Ordinance recognizes, that SDTPC is a "private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose."

However, SDTPC shall comply with Ralph M. Brown Act, California Government Code section 54950 *et. seq.*, at all times when matters within the subject matter of the District are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 *et. seq.*, for all documents relating to activities of the district.

Furthermore, the SDTPC Board of Directors shall comply with the California Corporations Code and shall develop internal policies defining standards, responsibilities and conduct for the Board of Directors.

#### **A Volunteer Board of Directors**

The members and officers of the Board of Directors of the San Diego Tourism Promotion Corporation will serve as volunteers. They will receive no monetary compensation or remuneration for their service individually or collectively. They are not entitled to nor may they make a claim for reimbursement of any personal or professional expenses attributed to their service. Other than Directors and Officers Liability Insurance no benefits such as, but not limited to, health insurance, workman's compensation insurance, disability insurance, or paid vacation, will be provided.

#### **Report of Activities**

The SDTPC shall cause to be prepared a prospective report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the activities described in the report.

The tourism marketing district association's first report shall be due after the first full fiscal year of operation of the district.

The report may propose changes, including, but not limited to, the boundaries of the tourism marketing district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of categories of business, if a classification is used.

The report shall be filed with the City Clerk prior to the end of each fiscal year, and shall refer to the tourism marketing district by name, specify the fiscal year to which the report applies, and with respect to that fiscal year, shall contain all of the following information:

- Any proposed changes to the boundaries of the tourism marketing district or to any benefit zones or classification of businesses within the district.
- The activities to be provided for that fiscal year.
- An estimate of the cost of providing the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this Division.

The San Diego City Council [Council] may approve the report as filed by the tourism marketing district association, or may modify any portion of the report and approve it as modified. Such modification shall only be made subject to the noticing provisions of San Diego Municipal Code sections 61.2519 and 61.2520. The Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

#### **Modifications of District Management Plan**

The SDTPC may, at any time, request that the San Diego City Council modify the district management plan. Any modification of the district management plan shall be made pursuant to the following requirements:

- Upon the written request of the tourism marketing district association, the San Diego City Council [Council] may modify the district management plan after conducting one public hearing on the proposed modifications. The Council may modify the activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution to make the modifications after holding a required public hearing. Notice of the public hearing and the proposed modifications shall be published as provided in San Diego Municipal Code section 61.2507. If the modification includes the levy of a new or increased assessment, the Council shall comply with Code section 61.2507.
- The Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

#### **Marketing Support Programs Application Guidelines & Criteria**

The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services that can deliver a measurable return on investment, and that are in addition to the programs fund by fixed allocations within its budget.

It is anticipated that the San Diego Tourism Promotion Corporation will solicit and/or receive applications for funding from numerous, diverse organizations, and entities. Specific application guidelines will be created and available soon after the SDTPC is appointed by the City to manage the Tourism Marketing District. Those guidelines, criteria and application will be created at the sole discretion of the Board of Directors of the San Diego Tourism Promotion Corporation. Changes to the guidelines, criteria and application can only be made by an action of the Board of Directors of the Corporation. (See Attachment 1, Framework for Application Criteria & Process.)

**Limiting Contact Between Applicants and the Board of Directors:** It will be vital that the application and allocation process for funding from the SDTPC be open, fair and efficient. To this end, the written submission of the application and supporting materials as well as any public presentation that may be required from applicants will be the foundation for Board discussion and deliberations. Board members are encouraged to limit their contact and communication with applicants regarding their applications or proposed application, and to disclose any such contact or communication prior to participating in the consideration of that applicant's submission.

## **ACTIVITIES & BUDGETS**

A general budget has been developed by lodging industry representatives to serve as a guideline in order that the San Diego Tourism Promotion Corporation (SDTPC) deliver measurable benefit and service levels throughout the District. An annual budget will be developed and approved by the SDTPC Board and included in the Report of Activities submitted to the City Council annually.

### **SDTPC: A NON-MARKETING ENTITY**

The San Diego Tourism Promotion Corporation is not envisioned as a marketing entity, but rather as a funding conduit for the development and implementation of effective marketing programs and services that benefit the assessed businesses within the District. SDTPC will be responsible for the allocation and distribution of the available revenue and will contract with qualified third-party vendors to supply marketing programs and services as required and approved by the Board of Directors.

### **SDTPC BUDGET GUIDELINES**

The San Diego Tourism Promotion Corporation (SDTPC) will contract for marketing programs and services to promote the City of San Diego as a tourism destination and to fund projects, programs, and activities that specifically benefit hotels within the boundaries of the District.

#### **General Guidelines:**

- (a) Marketing programs and services will be broadly defined by the Board of the SDTPC in order to remain current with changing consumer demands, tourism products, and marketing and communication technologies.
- (b) Marketing programs and services will take many traditional and/or innovative forms based on the target market and proposed strategy and tactics for implementation. Therefore, marketing programs and services could include, but not be limited to: i) advertising; ii) marketing promotion; iii) direct sales; iv) press and/or public relations; v) new product development; vi) prospective marketing; vii) visitor services; viii) market research; ix) e marketing & web strategies, x) partnership marketing; xi) special events, and more as identified.
- (c) Marketing programs and services will seek to benefit all assessed hotels within the boundaries of the District through a diverse mix of projects, programs and activities. It is recognized that all marketing programs and services will have multi-level benefits to the hotels in the District. Primary benefits will be realized directly by hotels in the target market area or market segment served by a particular contract program or service. Secondary benefits will be realized by all hotels in the District through the successful implementation of marketing programs and services that

increase hotel occupancies, reduce available hotel inventory and create compression within the marketplace.

- (d) Marketing programs will have measurable result. The Board of Directors of the SDTPC will establish and regularly update a clearly defined application process for proposed marketing programs. This application will articulate the required qualifications of applicants, the target return-on-investment, and the measurement of results, among other criteria.

**Fixed Allocations:**

- (e) At a minimum, the SDTPC shall annually allocate fifty percent (50%) of its District revenue and resources to a single comprehensive entity for the purpose of destination marketing for the City of San Diego, which, for the initial five (5) year term of this District, shall be the San Diego Convention & Visitors Bureau or its successor organization. A draft Memorandum of Understanding between the San Diego Convention & Visitors Bureau and the San Diego Tourism Promotion Corporation is attached (Attachment 2) that outlines the general condition of the measurements for this fixed funding. This draft is provided within for information only and will be the basis for a legally binding contract between these same parties once the District is established.
- (f) The SDTPC shall annually allocate ten percent (10%) of its District revenue and resources to a single comprehensive entity for the purpose of destination marketing for the northern region of the City of San Diego, which, for the initial five (5) year term of this District, shall be the San Diego North Convention & Visitors Bureau or its successor organization. This ten percent (10%) shall represent the annual minimum and maximum allocation available to the San Diego North Convention & Visitors Bureau. A draft Memorandum of Understanding between the San Diego North Convention & Visitors Bureau and the San Diego Tourism Promotion Corporation is attached (Attachment 3) that outlines the general conditions of and measurements for this fixed funding. This draft is provided within for information only and will be the basis for a legally binding contract between these same parties once the District is established.
- (g) The SDTPC shall annually allocate five percent (5%) of its revenue to a marketing opportunity/catastrophe reserve fund for the specific purpose of maximizing unique and unforeseen opportunities or reacting to unforeseen situations to positively impact the tourism economy in the San Diego region. For the initial five (5) year term of the district, the SDTPC marketing opportunity/catastrophe reserve fund shall be capped at a maximum of \$10,000,000 in principal contributions until such time as it is required for use. Interest returned on the holding and investment of the principal shall be re-invested into the SDTPC marketing opportunity/catastrophe reserve fund.

If the District is renewed following the initial five (5) year term, the available balance, including interest, of the SDTPC marketing opportunity/catastrophe reserve

fund shall be made available to the Corporation managing the renewed District. These previously accumulated funds shall be spent consistent with the allocations in this plan. Should the District not be renewed, the previously accumulated funds shall be proportionally refunded and distributed to the assessed businesses.

- (h) Operating Expenses: the SDTPC may annually allocate a maximum of three percent (3%) of its revenue to the operation and management of the SDTPC.

**Marketing Support Programs:**

- (i) The Board of Directors will annually allocate a portion of the annual revenue from the District to marketing support programs and services, either directly or indirectly through a competitive application process, that can deliver a measurable return on investment, and that are in addition to the programs funded by fixed allocations within the budget.

**SDTMD ANTICIPATED 5 YEAR REVENUE INCOME AND DISTRIBUTION**

Estimated revenues and expenditures are shown for each fiscal year. Certain assumptions and calculations were utilized in developing the projections and budgets below. Those assumptions are listed separately in this document in Attachment 4.

Due to the anticipated mid-fiscal-year start of the District, the first and last fiscal years reflect approximately 6 months worth of activities.

**Adjustments to Budget**

Any Annual budget surplus or deficit will be rolled over into the following year's TMD budget. Assessments will be set accordingly, within the constraints of the annual adjustment, to adjust for surpluses or deficits that are carried forward.

**Bonds**

No Bonds shall be issued in connection with this District.

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## Budget Spreadsheet

TMD FIVE YEAR BUDGET						
	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
	Approx. 6 months	12 months	12 months	12 months	12 months	Approx 6 months
Estimated TOT Revenue	\$ 79,600,000	\$168,752,000	\$ 178,877,120	\$ 189,609,747	\$ 200,986,332	\$106,477,000
Estimated TMD Revenue	\$14,176,381	\$30,053,928	\$31,857,163	\$33,768,593	\$35,794,709	\$18,971,196
Fixed Allocations	\$9,186,396	\$18,721,548	\$19,114,298	\$20,261,156	\$21,476,825	\$11,382,718
San Diego CVB	\$7,081,000	\$15,026,964	\$15,928,582	\$16,884,297	\$17,897,355	\$9,485,598
San Diego North CVB	\$1,416,200	\$3,005,393	\$3,185,716	\$3,376,859	\$3,579,471	\$1,897,120
San Diego Film Commission *	\$330,909	\$330,908				
San Diego Bowl Game Association *	\$195,569	\$195,568				
SD International Sports Council *	\$72,900	\$72,900				
San Diego Hall of Champions *	\$37,500	\$37,500				
Accessible San Diego *	\$32,520	\$32,519				
Elite Racing/Rock & Roll Marathon *	\$9,760	\$9,759				
California State Games *	\$7,714	\$7,713				
San Diego Crew Classic *	\$2,324	\$2,324				
Opportunity/Catastrophe Reserve @ 5%	\$708,819	\$1,502,696	\$1,592,858	\$1,688,430	\$1,789,735	\$948,560
SDTPC Operating Budget @ 3%	\$425,291	\$901,618	\$955,715	\$1,013,058	\$1,073,841	\$569,136
* Admin. Fee Paid to City	\$150,000	\$313,500	\$327,608	\$342,350	\$357,756	\$186,930
Available for Operating Expenses	\$275,291	\$588,118	\$628,107	\$670,708	\$716,085	\$382,206
Personnel						
Executive Director (Salary & Benefits)	\$100,000	\$209,000	\$218,405	\$228,233	\$238,504	\$124,618
Admin. Support (Salary & Benefits)	\$30,000	\$62,700	\$65,522	\$68,470	\$71,551	\$37,385
Contract Services						
Legal & Compliance/Corporate Secretary	\$36,000	\$72,000	\$72,000	\$72,000	\$72,000	\$36,000
Accounting/CPA/Corporate Treasurer	\$36,000	\$72,000	\$72,000	\$72,000	\$72,000	\$36,000
Audits (as required)	\$30,000	\$85,000	\$85,000	\$85,000	\$85,000	\$45,000
Overhead						
See Page 14	\$35,000	\$73,150	\$76,442	\$79,882	\$83,476	\$43,617
Contingency/Carry-over	\$8,291	\$14,268	\$38,739	\$65,123	\$93,554	\$59,585
Total Fixed Distribution	\$10,320,506	\$21,125,862	\$21,662,871	\$22,962,644	\$24,340,401	\$12,900,414
One-time Start-up Costs						
Reimburse Actual District Start-up Costs	\$112,000	\$0	\$0	\$0	\$0	\$0
Estimated City Start-up Costs	\$60,000	\$0	\$0	\$0	\$0	\$0
Total Start-up Costs	\$172,000	\$0	\$0	\$0	\$0	\$0
Total Variable Distribution	\$3,683,875	\$8,928,066	\$10,194,292	\$10,805,949	\$11,454,308	\$6,070,782
Marketing Support Programs	TBD	TBD	TBD	TBD	TBD	TBD
Competitive Application Process	TBD	TBD	TBD	TBD	TBD	TBD
*Groups with fixed funding from TMD for 12 months, shown here over 18 months budget cycle.						

**Operating Expenses**

The SDTPC may annually allocate a maximum of three percent (3%) of its revenue to the operation and management of the SDTPC. A detailed budget will be submitted and approved annually and shall include:

- Cost of service fees to be paid to the City of San Diego, including:
  - One time actual start-up costs not to exceed \$60,000 for:
    - System development including labor and hardware/software requirements
    - City Management time to establish policies and procedures, bring on additional staff, and implement program
  - An annual amount of no more than \$300,000 of TMD assessments, pro-rated at the establishment of the District and adjusted thereafter at the beginning of each fiscal year, to reflect an automatic annual escalator of 4.5%, for fixed cost increases for the following services:
    - CP&CI Economic Development division - Contract Management and Reimbursements
    - Office of the City Treasurer - Collection Administration, Management and Auditing
    - Office of the City Auditor and Comptroller-Check Disbursements and Program Auditing
    - Office of the City Attorney - Legal Review and Document Preparation
- Estimated operating expenses including wages, benefits, and administrative and overhead costs such as rent, supplies, utilities and travel;
- Estimated cost of directors and officers liability insurance in the amount of \$5,000,000 per director, plus additional insurance as required by the City;
- As required, estimated cost of performance audits of contracted entities receiving funding from SDTPC unless otherwise stipulated;
- As required, estimated cost of an annual financial audit of the SDTPC.

**FUNDING PROCESS****Method & Basis of Levying Assessment**

The proposed annual assessment amount is 2% of gross room revenue, which is defined as "total consideration charged to a *transient* as shown on the guest receipt for the occupancy of a room, or portion thereof, in a Hotel."

Gross room revenue will exclude revenue derived from a person who has exercised occupancy or was entitled to occupancy for more than one month where a month is defined as a period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists. Gross room revenues will also exclude certain revenues where exempt by treaty or by Federal or State laws or where transients are Federal or State Government officials exercising occupancy on government business as prescribed in the resolution establishing the district.



Transient occupancy taxes should not be included when calculating the assessment.

Total annualized assessments for the first year are estimated to be \$29.2 million. There shall be no increase in the assessment rate for the term of the district. Total collections may change in subsequent years according to the inventory of hotel rooms, the room rates, and the occupancy levels. No other sources of funds are anticipated from the District.

### **Operators Duties and Accounting Procedures**

- (a) The amount of assessment, if passed on to each Transient, shall be separately stated from the amount of Rent charged and any other applicable taxes, and each Transient shall receive a receipt for payment from the business. A duplicate of the receipt given to each Transient shall be kept by the business in accordance with subsection (c) below.
- (b) Each business shall account separately for, and maintain separate monthly summary totals for, taxable and non-taxable Rent and for the assessment.
- (c) Each business shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer. It shall be the duty of every business liable for the payment to the City of any assessment imposed to keep and preserve, for a period of three years within the boundaries of this City, all business records as may be necessary to determine the amount of such assessment for which the business is liable for payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of assessment due.
- (d) The costs of additional goods and services, which are not Rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a Hotel shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.

### **Time and Manner for Collecting Assessments**

The collection of the assessments levied shall be made at the time and in the manner set forth by the San Diego City Council in the resolution establishing the district. It is proposed that assessments will be remitted on a monthly basis to the City Treasurer by each business using a self-reporting form that identifies the accounting periods for the previous month and the applicable gross room revenue and District assessment for each of those accounting periods.

Assessments levied for the purpose of providing improvements and promoting activities that benefit businesses are not taxes for the general benefit of a city, but are assessments for the activities which confer benefits upon the assessed businesses for which the activities are provided.

**Penalties and Appeals**

Pursuant to the resolution of establishment for the TMD, penalties may be assessed against those benefited businesses failing to make timely payments. In addition, benefited businesses shall have a right to appeal penalties, as spelled out in the resolution of establishment.

Any benefited business failing to remit the TMD assessment within the time required under the resolution of establishment shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency, and one-third of one percent (1/3 of 1%) for each day thereafter, including weekends and holidays. Any penalty assessed shall not exceed twenty-five percent (25%) of the amount of the assessment due payable for the entire reporting period. The penalty assessed shall be in addition to the amount of the assessment due during the period for which assessments were not timely paid.

In the event there is a determination by the City Treasurer that non-payment of an assessment is due to fraud, the City Treasurer may assess a penalty of twenty-five percent (25%) of the amount of the assessment for the period in which the fraud occurred. Such a penalty for fraud related to payments shall be assessed over the above any penalties assessed daily, as discussed above. A benefited business may, within fourteen (14) days after the service or mailing of a notice of penalty, make application in writing to the City Treasurer for a hearing of appeal. In exercising its appeal rights, a benefited business shall follow the same procedures articulated in San Diego Municipal Code Sections 35.0117 and 35.0118.

**Assessments Based on Estimated Benefits**

"Assessment" means a levy for the purpose of promoting activities which will benefit the businesses located within a tourism marketing district. Assessments levied under a tourism marketing district are not special taxes.

Assessments levied on businesses shall be levied on the basis of the degree of estimated benefit to the businesses within the tourism marketing district. The proposed assessment is a percentage of gross room revenue, and so when a hotel's revenue increases from the enhanced tourism marketing services provided through the TMD, the real dollar amount of the assessment will increase proportionately.

The district's activities are designed to provide benefits specifically for the assessed businesses by increasing tourism within the boundaries of the District and hence increasing hotel room occupancy and revenues. An indirect benefit may accrue to the surrounding community or to the public as a result of the activities to be provided with the assessment levied. These indirect benefits (if any) are incidental and inconsequential.



## APPENDIX B

## List of Assessed Businesses – Updated as of 9/28/2007

Hotel Name	Hotel Location
500 West Broadway	500 W Broadway
Bahia Resort Hotel	998 West Mission Bay Dr
Bay Club Hotel & Marina	2131 Shelter Island Dr
Beach Cottages, The	4255 Ocean Bl
Best Western Americana Inn	815 W San Ysidro Bl
Best Western Bayside Inn	555 W Ash St
Best Western Blue Sea Lodge	707 Pacific Beach Dr
Best Western Hacienda Hotel Old Town	4041 Harney St
Best Western Inn By The Sea	7830 Fay Av
Best Western Inn-Miramar	9310 Kearny Mesa Rd
Best Western Island Palms Hotel & Marina	2051 Shelter Island Dr
Best Western Mission Bay	2575 Clairemont Dr
Best Western Posada@The Yacht	5005 North Harbor Dr
Best Western Seven Seas	411 Hotel Circle S Cr
Bristol Hotel	1055 01st Av
California Suites Hotel	5415 Clairemont Mesa Bl
Catamaran Resort Hotel	3999 Mission Bl
Chateau La Jolla	233 Prospect St
Comfort Inn & Suites Hotel Cir	2201 Hotel Circle S Cr
Comfort Inn & Suites Mission Valley	631 Cam Del Rio S
Comfort Inn & Suites Zoo/Sw	2485 Hotel Circle Pl
Comfort Inn Airport-Old Town	1955 San Diego Av
Comport Inn Gaslamp	660 G St
Country Inn & Suites	5975 Lusk Bl
Courtyard By Marriott	8651 Spectrum Center Bl
Courtyard By Marriott	530 Broadway
Courtyard By Marriott Rancho Bernardo	11611 Bernardo Plaza Ct
Courtyard By Marriott San Diego Old Town	2435 Jefferson St
Crown Plaza San Diego	2270 Hotel Circle North
Days Hotel - Hotel Circle	543 Hotel S Cr
Days Inn	4540 Mission Bay Dr
Days Inn & Suites	5343 Adobe Falls Rd
Days Inn & Suites	5550 Clairemont Mesa Bl
Days Inn Suites-Point Loma	3350 Rosecrans St
Doubletree Club Hotel San Diego	1515 Hotel Circle South
Doubletree Golf Resort San Diego	14455 Penasquitos Dr
Doubletree Hotel Del Mar	11915 El Cam Real

## APPENDIX B

## List of Assessed Businesses – Updated as of 9/28/2007

Hotel Name	Hotel Location
Doubletree Hotel San Diego-M.V	7450 Hazard Center Dr
Economy Inn	230 Via De San Ysidro
Embassy Hotel	3645 Park Bl
Embassy Suites	601 Pacific Hy
Embassy Suites San Diego La Jolla	4550 La Jolla Village Dr
Empress Hotel The	7766 Fay Av
Estancia La Jolla Hotel & Spa	9700 Torrey Pines Rd
Extended Stay America # 8787	3860 Murphy Canyon Rd
Extended Stay America #8573	2087 Hotel Circle South
E-Z 8 Motel Of Old Town	4747 Pacific Hy
E-Z 8 Motel-South Bay	1010 Outer Rd
E-Z 8 Motels-Sports Arena	3333 Channel Wy
Fairfield Inn & Suites	641 Cam Del Rio S
Four Points Sheraton	8110 Aero Dr
Golden West Hotel	720 04th Av
Good Nite Inn	3880 Greenwood St
Good Nite Inn	4545 Waring Rd
Hampton Inn	5434 Kearny Mesa Rd
Hampton Inn Del Mar	11920 El Cam Real
Hampton Inn San Diego Downtown	1531 Pacific Hy
Hampton Inn Sea World/Airport	3888 Greenwood St
Handlery Hotel & Resort	950 North Hotel Cr
Hilton Garden Inn - Rancho Bernardo	17240 Bernardo Garden Dr
Hilton Hotel-San Diego	1775 East Mission Bay Dr
Hilton La Jolla Torrey Pines	10950 Nrth Torrey Pines Rd
Hilton San Diego / Del Mar	15575 Jimmy Durante Bl
Hilton San Diego Airport	1960 Harbor Island Dr
Hilton San Diego Gaslamp Qtr	401 K St
Hilton Sd Mission Valley	901 Cam Del Rio S
Holiday In San Diego - Downtown	1617 01st Av
Holiday Inn Express	2296 Niels Bohr Ct
Holiday Inn Express	3950 Jupiter St
Holiday Inn Express	9888 Mira Mesa Bl
Holiday Inn Express & Suites	5925 Lusk Bl
Holiday Inn Express Missionbay	4610 De Soto St
Holiday Inn Express Old Town	3900 Old Town Av
Holiday Inn Mission Bay/Seaworld	3737 Sports Arena Bl

## APPENDIX B

## List of Assessed Businesses – Updated as of 9/28/2007

Hotel Name	Hotel Location
Holiday Inn Msn Vly-Stadium	3805 Murphy Canyon Rd
Holiday Inn Rancho Bernardo	17065 West Bernardo Dr
Holiday Inn San Diego Bayside	4875 North Harbor Dr
Holiday Inn San Diego North Mi	9335 Kearny Mesa Rd
Holiday Inn-Mission Valley	595 Hotel Circle South
Holiday Inn-S.D. On The Bay	1355 Harbor Dr
Homestead Village	9880 Pacific Heights Bl
Homestead Village M.V.	7444 Mission Valley Rd
Homewood Suites	11025 Vista Sorrento Py
Horton Grand Hotel	311 Island Av
Hotel La Jolla At The Shores	7955 La Jolla Shores Dr
Hotel Solamar	435 06th Av
Howard Johnson	1631 Hotel S Cr
Howard Johnson Inn	3330 Rosecrans St
Humphrey's Half Moon Inn & Suites	2303 Shelter Island Dr
Hyatt Regency La Jolla	3777 La Jolla Village Dr
Hyatt Regency Mission Bay Spa And Marina	1441 Quivira Rd
Hyatt Regency San Diego	0 One Market Pl
Island Inn	202 Island Av
Kings Inn	1333 Hotel Circle South
Kona Kai Resort	1551 Shelter Island Dr
La Jolla Beach Club Apartments	2000 Spindrift Dr
La Jolla Cove Suites	1155 Coast Bl
La Jolla Marriott	4240 La Jolla Village Dr
La Pensione	606 W Date St
La Quinta Inn	2380 Moore St
La Quinta Inns & Suites	10185 Paseo Montrail
La Valencia Hotel	1132 Prospect St
Lafayette Hotel & Suites	2223 El Cajon Bl
Mission Valley Travelodge	1201 Hotel Circle S Cr
Mission Vally Resort	875 Hotel Circle South
Motel 6 #1419	1546 02nd Av
Motel 6 (Loc #98)	160 Calle Primera
Motel 6 (Loc#14)	2424 Hotel Circle N Cr
New Plaza Hotel	1037 04th Av
Ocean Park Inn	710 Grand Av
Old Town Inn	4444 Pacific Hy

## APPENDIX B

## List of Assessed Businesses – Updated as of 9/28/2007

Hotel Name	Hotel Location
Omni San Diego Hotel	675 L St
Otay Mesa Comfort Suites	2351 Otay Center Dr
Pacific Terrace Hotel	610 Diamond St
Padre Trail Inn	4200 Taylor St
Park Manor Suites	525 Spruce St
Premier Inn	2484 Hotel Circle Pl
Quality Inn	1430 07th Av
Quality Inn	2901 Nimitz Bl
Quality Suite Hotel	9880 Mira Mesa Bl
Radisson Hotel Harbor View	1646 Front St
Radisson Suite Hotel Rancho Bernardo	11520 West Bernardo Ct
Ramada Inn & Suites	830 06th Av
Ramada Inn San Diego North	5550 Kearny Mesa Rd
Ramada Limited	1403 Rosecrans St
Ramada Plaza Hotel Circle	2151 Hotel Circle South
Rancho Bernardo inn	17550 Bernardo Oaks Dr
Residence Inn By Marriott	12011 Scripps Highlands Dr
Residence Inn By Marriott Carmel Mountain Ranch	11002 Rancho Carmel Dr
Residence Inn San Diego Central	5400 Kearny Mesa Rd
Residence Inn San Diego Downtn	1747 Pacific Hy
Residence Inn San Diego La Jolla	8901 Gilman Dr
San Diego Marriott Courtyard	9650 Scranton Rd
San Diego Marriott Del Mar	11966 El Cam Real
San Diego Marriott Gaslamp Qtr	660 K St
San Diego Marriott Hotel And Marina	333 West Harbor Dr
San Diego Marriott Mission Valley	8757 Rio San Diego Dr
San Diego Paradise Point Resor	1404 West Vacation Rd
San Diego/Mvresidence Inn	1865 Hotel Circle South
Sea Lodge Hotel	8110 Cam Del Oro
Sheraton La Jolla Hotel	3299 Holiday Ct
Sheraton San Diego Hotel & Marina	1380 Harbor Island Dr
Sheraton San Diego Mission Vly	1433 Cam Del Rio S
Sheraton Suites San Diego	701 A St
Sofia Hotel	150 West Broadway
Sommerset Hotel	606 Washington St
Sorrento Mesaresidence Inn	5995 Pacific Mesa Ct
Springhill Suites By Marriott	12032 Scripps Highlands Dr

**APPENDIX B**  
**List of Assessed Businesses – Updated as of 9/28/2007**

<u>Hotel Name</u>	<u>Hotel Location</u>
Staybridge Suites Carmel Mtn	11855 Of Industry Av
Staybridge Suites Sorrento	6639 Mira Mesa Bl
Studio 819	819 University Av
Super 8 Motel	445 Hotel Circle South
Super 8 Motel	4380 Alvarado Canyon Rd
Super 8 Motel Bayview	1835 Columbia St
The Baltic Inn	521 06th Av
The Dana On Mission Bay	1710 West Mission Bay Dr
The Friendship Hotel	3942 08th Av
The Grande Colonial Hotel	910 Prospect St
The J Street Inn	222 J St
The Lodge At Torrey Pines	11480 Nrth Torrey Pines Rd
The US Grant	326 Broadway
The Westin Horton Plaza	910 Broadway Cr
Town & Country Hotel	500 Hotel N Cr
Travelodge - Airport City	2353 Pacific Hy
U.S. Suites Of San Diego	10439 Roselle St
Vagabond Inn	625 Hotel Circle South
Valli Hi Motel	655 W San Ysidro Bl
Vantaggio Suites	1736 State St
W San Diego	421 West B St
West Park Inn	1840 04th Av
Westgate Hotel	1055 02nd Av
Woodfin Suite Hotel	10044 Pacific Mesa Bl
Wyndham Emerald Plaza Hotel	400 W Broadway



**ATTACHMENTS**

The following attachments are provided for information and reference purposes only. They are not meant to be construed as a part of the District Management Plan, rather they are provided as guidelines for deliberations and decisions to be made solely by the Board of Directors of the San Diego Tourism Promotion Corporation.

Attachment 1 – Framework for Application Criteria and Process

Attachment 2 – Memorandum of Understanding with San Diego Convention & Visitors Bureau

Attachment 3 – Memorandum of Understanding with San Diego North Convention & Visitors Bureau

Attachment 4 – Assumptions to Five-year Revenue Income and Distribution Budgets

## ATTACHMENT 1

**Framework For Application Criteria & Process**

It is anticipated that the San Diego Tourism Promotion Corporation will solicit and/or receive applications for funding from numerous, diverse organizations, and entities. Specific application guidelines will be created and available once the SDTPC is appointed by the City to manage the Tourism Marketing District. Those guidelines, criteria and application will be created at the sole discretion of the Board of Directors of the San Diego Tourism Promotion Corporation. Changes to the guidelines, criteria and application can only be made by an action of the Board of Directors. The criteria below will form the basis for the subsequent guidelines:

**Legal Status:**

- Applicants must demonstrate proof of current legal status within the jurisdiction of the headquarters of their business or corporation.

**Tourism Mission:**

- While an applicant's primary mission need not be tourism related, the applicant's mission must include an acknowledgement of tourism marketing as a component of that mission.

**Use of Funds:**

- An applicant's income from the SDTPC must be solely used for the purpose of fulfilling the tourism marketing portion of its mission as articulated in its application for funding.

**Track Record:**

- An applicant must have a demonstrable history of successful, ongoing programming or business performance prior to submitting an application.

**Location:**

- Regardless of where an applicant is headquartered or physically located, or where a particular marketing program is implemented, 100% of the funding received from the SDTPC must be applied to, or in support of, programs designed for the measurable benefit of hotels (lodging businesses) within the City of San Diego.

**Compliance:**

- Former contractors of the City of San Diego must have submitted acceptable final report packages on any completed contract and be in good standing with the City.

**Application:**

- Each applicant for funding will be required to submit an "Application Request for Funding" that will require significant information about the applying organization or entity, as well as a specific proposal for how the requested funds will be spent, the expected result and the proposed method for measuring results. As a model for the type and depth of information required, it is suggested that prospective applicants become familiar with the Citywide Small Business Enhancement Program Grant Guidelines & Application, published by the City of San Diego City Planning and Community Investment Department Office of Small Business.

**Framework for Application Criteria & Process****Page 2****Fundamental Requirements:**

- Fundamental to the funding of any application will be the clearly articulated benefit to hotels in the City of San Diego. While benefit may be delivered in numerous ways, by far the most important benefit will be measured in the delivery of room nights. Successful applications will clearly describe the strategy and tactics for delivering room nights as well as the number of room nights projected and estimated gross room revenue. Letters of intent for hotel room blocks and/or tentative agreements with hotels will provide the necessary back up to support the above projections and estimates.
- When considering these fundamental application requirements, priority will be given to:
  - Special need periods of the year
  - Special need geographic locations within the City
  - Incremental new room nights from existing programs or sponsoring organizations

**Determining Return On Investment**

- All successful applicants will clearly demonstrate a measurable Return On Investment (ROI) for the programs or services they propose. That Return On Investment can be determined in a number of different ways. Applicants are encouraged to develop and demonstrate their suggested method of measuring ROI for their particular program as a part of their application.

**Application Timeline**

- An application calendar and timeline will be published annually to guide applicants through the application process

**Oral Presentation**

- Should an application meet the fundamental requirements for consideration, and prior to any final decision, qualifying finalist may be invited to make a public, oral presentation before the SDTPC Board of Directors.

**Contract Agreement**

- Once the Board of Directors has approved funding and the SDTPC budget is approved by the City Council, a Contract Agreement is issued to the successful applicants. The Contract Agreement details the terms and conditions of the contract between the SDTPC and the organization and the organization's scope of work, anticipated results and mutually agreed upon method(s) for measuring those results.

## ATTACHMENT 2

**Draft Memorandum of Understanding with San Diego CVB**

This is a Memorandum of Understanding (MOU) between the San Diego Tourism Promotion Corporation (SDTPC) and the San Diego Convention & Visitors Bureau. This MOU addresses Funding, Performance and Performance Measurement.

The following points of agreement shall be included in the Management Plan for the City of San Diego Tourism Marketing District:

1. Percentage Fixed Revenue  
San Diego CVB shall receive 50% of the annual gross revenue generated by the Tourism Marketing District. This figure represents minimum, base funding. Additional funding may be allocated contingent upon a successful application to the SDTPC.
2. Specific Use For City of San Diego Lodging Establishments  
The revenue received by San Diego CVB from the SDTPC will be segregated from other income and may be utilized to sell, market and promote (the City of San Diego to the benefit of) lodging establishments within the city limits of the City, and may include support activities such as critical operational expenses, including but not limited to salaries and benefits.
3. Annual Performance Audit  
For purposes of inclusion in an Annual Report to the City Council, San Diego CVB shall comply with and support an annual Performance Audit based on mutually agreed upon performance standards to measure a return on investment to the City generated by San Diego CVB activities funded by the SDTPC. It is acknowledged that some activities and programs may extend over multiple years, rendering a single year assessment problematic. This Performance Audit shall be performed by a mutually agreed upon third-party auditor, and shall be paid for by the San Diego CVB.
4. Annual Financial Audit  
For purposes of inclusion in an Annual Report to the City Council and general public distribution, San Diego CVB shall comply with and support an annual Financial Audit of all income and expenses relative to its operation. Specific focus of this Financial Audit will be the correct and appropriate use of SDTPC revenue to sell, market and promote (the City of San Diego to the benefit of) lodging establishments within the city limits of the City. This Financial Audit shall be performed by a third-party auditor selected by the San Diego CVB, and shall be paid for by the San Diego CVB.

**Draft Memorandum of Understanding with San Diego CVB****Page 2**5. Term

The effective term of the items specified in this memorandum shall be contiguous with the term of the Tourism Marketing District, 5 years, or as approved by the City Council.

6. Contract

San Diego CVB and the SDTPC shall execute a mutually agreed upon contract that will include all of the elements listed above, and that will provide for a clear understanding of the relationship between San Diego CVB and the SDTPC. This contract will include language defining required, mutually agreed upon performance standards and the funding consequences possible should those standards not be met. This contract will define the necessary market research into mutually agreed upon areas or subjects to be provided by the San Diego CVB.

7. Effective Date

The effective date will be the first day of collections from assessed businesses, as approved by the City Council.

## ATTACHMENT 3

**Draft Memorandum of Understanding with San Diego North CVB**

This is a Memorandum of Understanding (MOU) between the San Diego Tourism Promotion Corporation and the San Diego North Convention & Visitors Bureau. This MOU addresses Funding, Performance and Performance Measurement.

The following points of agreement shall be included in the Management Plan for the City of San Diego Tourism Marketing District:

1. Percentage Fixed Revenue: San Diego North CVB shall receive 10% of the annual gross revenue generated by the Tourism Marketing District. This figure is both the minimum and the maximum annual funding available to San Diego North from the SDTPC.
2. Specific Use For City of San Diego Lodging Establishments: The revenue received by San Diego North CVB from the TMD will be segregated from other income and may be utilized to sell, market and promote (the northern portion of the City of San Diego to the benefit of) lodging establishments within the city limits of the City, and may include support activities such as critical operational expenses, including but not limited to salaries and benefits.
3. Annual Performance Audit: For purposes of inclusion in an Annual Report to the City Council, San Diego North CVB shall comply with and support an annual Performance Audit based on mutually agreed upon performance standards to measure a return on investment to the City generated by San Diego North CVB activities funded by the TMD. It is acknowledged that some activities and programs may extend over multiple years rendering a single year assessment problematic. This Performance Audit shall be performed by a mutually agreed upon third-party auditor, and shall be paid for by the San Diego North CVB.
4. Annual Financial Audit: For purposes of inclusion in an Annual Report to the City Council and general public distribution, San Diego North CVB shall comply with and support an annual Financial Audit of all income and expenses relative to its operation. Specific focus of this Financial Audit will be the correct and appropriate use of TMD revenue to sell, market and promote (the northern portion of the City of San Diego to the benefit of) lodging establishments within the city limits of the City. This Financial Audit shall be performed by a third-party auditor selected by the San Diego North CVB, and shall be paid for by the San Diego North CVB.
5. Term: The effective term of the items specified in this memorandum shall be contiguous with the term of the Tourism Marketing District, 5 years, or as approved by the City Council.

**Draft Memorandum of Understanding with San Diego North CVB****Page 2**

6. Contract: San Diego North CVB and the SDTPC shall execute a mutually agreed upon contract that will include all of the elements listed above, and that will provide for a clear understanding of the relationship between San Diego North CVB and the SDTPC. This contract will include language defining required, mutually agreed upon performance standards and the funding consequences possible should those standards not be met. This contract will define the necessary market research into mutually agreed upon areas or subjects to be provided by the San Diego North CVB.
7. Effective Date: The effective date will be the first day of collections from assessed businesses, as approved by the City Council.

## ATTACHMENT 4

**Assumptions to Revenue Income & Distribution Calculations**

- A. City projects \$159.2 million in TOT revenue for FY '08.
- B. Estimated TOT Revenue: Assumes 6% growth annually in TOT revenues through 2013.
- C. Estimated TMD Revenue: Assumes the equivalent of 2 points of TOT.
- D. Administration Fee Paid to City: Assumes an automatic annual escalator of 4.5%.
- E. SDTPC Personnel Expenses: Assumes an automatic annual escalator of 4.5%
- F. SDTPC Overhead Assumes an automatic annual escalator of 4.5%
- G. Annual escalator of 4.5% is derived from actuarial assumptions used in calculating increases in City personnel costs in order to forecast changes to the City's pension obligation.



000409

# REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

 1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY) 209  
12/03

 TO: CITY ATTORNEY  
 2. FROM (ORIGINATING DEPARTMENT): CITY PLANNING & COMMUNITY INVESTMENT  
 3. DATE: 9/21/2007

 4. SUBJECT:  
TOURISM MARKETING DISTRICT ESTABLISHMENT

5. PRIMARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Scott Kessler x66405 MS56-D

6. SECONDARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Meredith Dibden Brown x66485 MS56-D

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☐

## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST: Approximately \$25 million of TMD assessments will be collected annually by City on behalf of TMD and disbursed back to the TMD non-profit less City admin. costs. In FY2008 approx. \$5.3M will be reimbursed to the City from the TMD for certain FY2008 citywide TOT allocations and to offset TMD start-up costs.
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	SCOTT KESSLER	9-27-07	8	DEPUTY CHIEF	WILLIAM ANDERSON	9/27/07
2	DEPARTMENT DIRECTOR	WILLIAM ANDERSON	9-27-07	9	COO	JAY GOLDSTONE	9/27/07
3	ENVIRONMENTAL REVIEW	KENNETH TEASLEY	9/27/07	10	CITY ATTORNEY	ALEX SACHS	9/28/07
4	LIAISON OFFICE	ED PLANK	9/27/07	11	ORIGINATING DEPARTMENT	MEREDITH DIBDEN BROWN	9-27-07
5	FINANCIAL MANAGEMENT	AUTHORIZED SIGNER	9/27/07	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6	AUDITORS	AUTHORIZED SIGNER	9/27/07	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 10/15/07			
7							

11. PREPARATION OF:

☒ RESOLUTION(S)☐ ORDINANCE(S)☒ AGREEMENT(S)☐ DEED(S)

1. Approve TMD Management Plan, declare intent to establish Tourism Marketing District (TMD) and to levy assessments for the TMD for a maximum of 5 years, set November 20, 2007 as the noticed public meeting date, set December 3, 2007 as the noticed public hearing date for counting ballots and considering protests, and direct that the notice to affected businesses shall include a ballot whereby businesses may indicate their support of or opposition to the proposed assessment.
2. Establish the TMD and authorize the levying of the assessment.
3. Authorize executing a TMD Operating Agreement with a non-profit representing the assessed businesses.

11A. STAFF RECOMMENDATIONS:

Adopt the Resolutions

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 1, 2, 3, 4, 5, 6, 7, 8.

COMMUNITY AREA(S): Citywide.

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to CEQA pursuant to State Guidelines Section 15060 (c) (3).

HOUSING IMPACT: None.

 OTHER ISSUES: Clerk to publish display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks and CP&CI staff to mail notice and ballot to affected hotels so that the public hearing takes places no earlier than 45 days after the mailing and first publication of the advertisement.  
 We request between October 29 and November 20, 2007 as the noticed public meeting date and December 3, 2007 as the noticed public hearing date.

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: \_\_\_\_\_ REPORT NO: \_\_\_\_\_  
ATTENTION: City Council  
ORIGINATING DEPARTMENT: City Planning & Community Investment  
SUBJECT: Establishment of Tourism Marketing District  
COUNCIL DISTRICT(S): 1, 2, 3, 4, 5, 6, 7, 8  
CONTACT/PHONE NUMBER: Scott Kessler 23-66405/Meredith Dibden Brown 23-66485

**REQUESTED ACTION:**

At the first Council Date:

1. Approve the Tourism Marketing District Management Plan;
2. Declare intent to establish Tourism Marketing District (TMD) and to levy assessments for the TMD for a maximum of 5 years and set a noticed public meeting date of November 20, 2007, and set December 3, 2007 as the noticed public hearing date for counting ballots and considering protests, and direct that the notice to affected businesses shall include a ballot whereby businesses may indicate their support of or opposition to the proposed assessment.

At the second Council date (November 20, 2007):

3. Hold public meeting and permit testimony in support of or in opposition to the proposed assessment.

At the third Council date (Council Meeting of December 3, 2007):

4. Hold public hearing and permit testimony in support of or in opposition to the proposed assessment and at the conclusion of the hearing direct City Clerk to count the ballots.
5. Establish the TMD and authorize the levying of the assessment.
6. Authorize the Mayor to execute an agreement with the non-profit representing the assessed businesses for management of the Tourism Marketing District.

**STAFF RECOMMENDATION:** Approve the requested actions.

**EXECUTIVE SUMMARY:** Representatives from the hotel industry approached City officials about implementing a Tourism Marketing District in mid-2005. Industry representatives were interested in developing a new source of revenue for marketing and promotion in order to retain and expand the tourism industry in San Diego. The tourism industry is the third largest revenue generator for the San Diego economy and a key employment sector. However, future growth of the industry is dependent on additional marketing of San Diego, especially as more hotel rooms come on-line. Maintaining or increasing hotel occupancy rates will also result in enhanced TOT revenues to the City.

Earlier this year, the Tourism Marketing District Procedural Ordinance was adopted. This ordinance outlines the process for forming a Tourism Marketing District. It requires that a TMD Management Plan be developed and that petitions be obtained in support of the district (and the TMD Management Plan) from hotels representing more than 50% of the proposed assessments in order to bring the matter to City Council. The TMD Management Plan (Attachment A) and

petition was developed and distributed to 175 businesses (hotels) with 70 or more sleeping rooms. As of September 27, 2007, City Treasurer staff received and verified petitions in support of establishing a Tourism Marketing District from businesses representing more than 50% of the total proposed annual assessments.

As required by the Tourism Marketing District Procedural Ordinance, the establishment of the TMD is being brought to the City Council. Furthermore, if the Council declares its intention to establish the TMD and levy the assessment then the TMD Procedural Ordinance requires that a mailed ballot procedure be conducted by City staff and counted by the City Clerk to determine if a majority protest exists. If the San Diego Tourism Marketing District is established and is successful then the affected hotels could vote to extend the district at the end of the initial five (5) year period, if not, then the district would lapse of its own accord.


FISCAL CONSIDERATIONS: If the TMD is established then it is anticipated that the City will collect approximately \$25 million of TMD assessments annually which will then be disbursed back to the TMD non-profit on a reimbursement basis. Actual costs incurred by the City in administering the TMD program, but not to exceed \$300,000 annually plus a cost escalator, will be recouped from the TMD assessments. In FY2008, approximately \$5.3 million will be reimbursed to the City from the TMD assessments for certain FY2008 citywide TOT allocations. Additionally, the City will be reimbursed for initial start-up costs not to exceed \$60,000. On an on-going basis, for the term of the TMD, the City would no longer provide annual funding of approximately \$10 million to the San Diego Convention and Visitors Bureau and other tourism-related organizations since funding would be provided through the Tourism Improvement District assessments rather than being funded by the City with TOT funds.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On July 19, 2006 an information only presentation was made to the Budget and Finance Committee by the San Diego Lodging Industry Association on the status of the proposed Tourism Marketing District. The TMD Procedural Ordinance was introduced at Council and had a second reading in May 2007. The ordinance was added to the SDMC on May 30, 2007 and became effective on June 29, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Both the Lodging Industry Association and the San Diego County Hotel-Motel Association have participated in the preparation of all Tourism Marketing District documents. Mr. Scott Kessler has addressed industry participants at monthly meetings of the San Diego County Hotel-Motel Association and at committee meetings of the Greater San Diego Chamber of Commerce. Meetings have also been held with representatives of the San Diego Convention and Visitors Bureau to answer questions about the Tourism Improvement District concept. Adopting the resolution of intent will require staff to notice the affected hotel business owners of the public hearings and cause a mailed ballot to occur to determine if there is a majority protest.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders are the hotels in San Diego with 70 or more rooms that would be required to pay the TMD assessment.

  
William Anderson Scott Kessler  
Originating Department

  
William Anderson  
Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF INTENTION TO ESTABLISH A TOURISM MARKETING DISTRICT; TO LEVY ASSESSMENTS FOR A PERIOD OF FIVE (5) YEARS; TO DIRECT THE MAILING OF BALLOTS TO AFFECTED BUSINESSES; TO SET DATES FOR A NOTICED PUBLIC MEETING FOR THE PURPOSE OF RECEIVING TESTIMONY AND A PUBLIC HEARING TO COUNT BALLOTS, CONSIDER PROTESTS AND ESTABLISH THE DISTRICT; AND TO APPROVE THE TOURISM MARKETING DISTRICT (TMD) MANAGEMENT PLAN.

WHEREAS, on May 22, 2007, the Council of the City of San Diego adopted Ordinance O-19622 N.S., an ordinance amending Chapter 6, Article 1 of the San Diego Municipal Code by adding Division 25, the San Diego Tourism Marketing District Procedural Ordinance, effective date June 29, 2007; and

WHEREAS, the aforementioned procedural ordinance prescribes certain steps to be taken for the establishment of a Tourism Marketing District (TMD) within the City of San Diego; and

WHEREAS, the City of San Diego has been working with members of the lodging industry, including the San Diego Lodging Industry Association and the San Diego County Hotel & Motel Association regarding the industry's desire to establish a San Diego Tourism Marketing District (TMD) and to levy an assessment on lodging businesses within the City; and

WHEREAS, the lodging industry has worked with the City to develop a TMD Management Plan pursuant to San Diego Municipal Code section 61.2507; and

WHEREAS, the lodging industry has additionally gathered written petitions signed by business owners who represent entities expected to pay more than fifty (50) percent of the assessments in the proposed district, thus signaling the requisite support pursuant to San Diego

000414

Municipal Code section 61.2506(a) for the initiation of the proceedings to form a district. NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council does hereby approve the Tourism Marketing District (TMD) Management Plan, dated September 2007, attached hereto as Exhibit "A", and on file with the Office of the City Clerk as file number RR - \_\_\_\_\_;

BE IT FURTHER RESOLVED, that the Council does hereby declare its intent to establish a Tourism Marketing District and its intent to levy and collect assessments, for a period of five (5) years, pursuant to the procedures included in San Diego Municipal Code section 61.2501 *et. seq.*, the San Diego Tourism Marketing District Procedural Ordinance.

BE IT FURTHER RESOLVED, that the Council does hereby declare its intent that specific issues as identified by the Independent Budget Analyst (IBA) in IBA Report Number 07-95 be addressed in any contract with a non-profit tourism marketing entity that is presented for consideration by the Council along with a resolution of establishment. Such issues shall include:

1. A statement that any annual marketing subsidy provided to the San Diego Convention Center Corporation is not contractually required but rather is requested on an annual basis;
2. A requirement that the tourism marketing non-profit annually provide the City a summary of expenditures for the prior fiscal year and actual or expected return on investment on expenditures;
3. A clarification of whether the City or the TMD non-profit will be responsible for covering any unforeseen and/or extraordinary expenses accrued by the City, in association with the TMD administration, including, but not limited to,

possible legal expenses, should such expenses exceed the City's TMD

Administrative Costs anticipated in the Management Plan;

4. A recitation of the manner in which interest and/or penalties are assessed against business owners failing to comply with TMD reporting timelines; the manner in which business owners may appeal the levying of interest or penalties; and clarification as to whether the City or the TMD non-profit would retain the proceeds from interest and penalties; and
5. A specific elaboration on the tourism marketing non-profit's commitment to fund certain longstanding Transient Occupancy Tax (TOT) recipients for the first 12 months of the TMD's operations and the longer-term commitment of funds to the San Diego Convention and Visitors Bureau and San Diego North Convention and Visitors Bureau;

BE IT FURTHER RESOLVED, that;

Section 1. PROPOSED ACTIVITIES

The proposed activities of the TMD consist in general of those items described in the TMD Management Plan, Exhibit "A" attached hereto. The activities will be funded through the San Diego Tourism Promotion Corporation with the intent to deliver measurable benefit and service levels throughout the TMD. The Corporation will serve as a funding conduit for the development and implementation of effective marketing programs and services that benefit the assessed businesses within the TMD.

Section 2. DURATION OF ASSESSMENTS; AMOUNT OF PROPOSED  
ASSESSMENTS

The assessments for district activities will be levied for an initial period of five years, pursuant to San Diego Municipal Code [Code] section 61.2507(h), commencing on January 1, 2008, and terminating on December 31, 2012.

The proposed annual assessment amount is two (2) percent of gross room revenue for lodging businesses with seventy (70) or more sleeping rooms located within the district. Pursuant to the Management Plan, gross room revenue is defined as the "total consideration charged to a transient, as shown on the guest receipt for the occupancy of a room, or portion thereof, in a hotel." Gross room revenue shall also include such incidental items of consideration as detailed in the definition of "rent" in Code section 35.0102. Gross room revenues will exclude those revenues derived from exempt activities as also detailed in San Diego Municipal Code 35.0111, the exemptions under the Transient Occupancy Tax. Transient occupancy taxes due shall not be included when calculating the assessment. Assessment amounts, if passed onto the transient, shall be specifically identified in any and all communications as a "San Diego Tourism Marketing District Assessment."

Section 3. BONDS

Bonds will not be issued in connection with the establishment or continued operation of the San Diego Tourism Marketing District.

Section 4. BOUNDARIES OF PROPOSED DISTRICT

The boundaries of the proposed Tourism Management District shall be the entire corporate limits of the City of San Diego, as shown on a map included as Appendix A to the TMD Management Plan.

Section 5. ASSESSED BUSINESSES; TIME AND MANNER OF COLLECTION

Pursuant to the TMD Management Plan, assessments are proposed to be levied upon the owner(s), operator(s), or authorized representatives of lodging businesses with seventy (70) or more sleeping rooms located within the City of San Diego. Lodging businesses with fewer than seventy (70) sleeping rooms will not be assessed. A listing of those businesses subject to the initial TMD assessments as of October 2007 is attached as Appendix B to Exhibit A (The TMD Management Plan). As new lodging businesses begin operation, and as existing businesses with fewer than seventy (70) sleeping rooms expand, the number of assessed businesses will increase.

The collection of the assessments levied under the TMD shall be made at the time and in the manner that is set forth by the San Diego City Council in a forthcoming resolution of district establishment. Under the TMD Management Plan, it is proposed that assessments be remitted on a monthly basis to the City Treasurer, with businesses using a self-reporting form indicating the accounting period for the previous month, the applicable gross room revenue and the district assessment.

#### Section 6. NOTICE OF PROPOSED ASSESSMENTS; PROVISION OF BALLOT

Following the approval of this resolution, City staff shall provide the lodging business owners notice, by mail, of the proposed establishment of the TMD, the estimated total initial annual assessments for the entire district, and a specific formula with sufficient detail to allow the business owner to calculate the proposed assessment for individual lodging businesses. The notice shall include additional information as required in San Diego Municipal Code [Code] section 61.2508(c), and shall include a summary of the procedures for the completion, return and tabulation of ballots as required under Code section 61.2508(d).

#### Section 7. SETTING OF TIME AND DATE FOR PUBLIC MEETING

Pursuant to the requirement of California Government Code section 54954.6(a)(1) that, before any new assessments are adopted, the legislative body shall conduct at least one public



meeting at which local officials shall allow public testimony, City staff shall notice a public meeting regarding the proposed assessments. Said public meeting shall be held on Tuesday, November 20, 2007 at 10:00 a.m. in Council Chambers of the San Diego City Administration Building, 202 C Street, in the City of San Diego, California.

Section 8. TIME AND PLACE OF PUBLIC HEARING; CONSIDERATION OF PROTESTS; TABULATION OF BALLOTS AND ESTABLISHMENT OF DISTRICT

Pursuant to San Diego Municipal Code section 61.2508(e), a noticed public hearing shall be held on Monday, December 3, 2007 at 2:00 p.m. in the Council Chambers of the San Diego City Administration Building, 202 C Street, in the City of San Diego, California. This shall be noted as the date, hour and place for the hearing when any person interested may state support or opposition to the proposed levy of assessments, the proposed amount of the assessments, or the proposed activities of the TMD. If need be, the hearing may be continued from time to time, so long as all continuances are properly noticed. Failure of any person to make objections at the time of the hearing, or any continuance thereof, will be deemed to be a waiver of all objections and shall operate as a bar for any claim for damages. In order to be counted as official protests, they must be submitted in writing in the form of the official ballot and must contain a description of the business in which each signer thereof is interested, sufficient to identify the same. Any and all protests shall be delivered to and filed with the City Clerk at a time no later than the hour set for the hearing or continuance thereof.

At the public hearing, the Council shall consider all protests against the proposed TMD assessment and City staff shall tabulate the ballots. The Council shall not impose the assessment if there is a majority protest. Under San Diego Municipal Code section 61.2508(e), a majority protest exists if, upon conclusion of the hearing and tabulation of the ballots, those ballots

submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, based on a weighted vote.

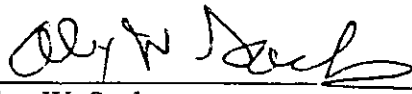
Persons desiring to make inquiries regarding these proceedings are hereby advised that they may contact Meredith Dibden-Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14<sup>th</sup> Floor, San Diego, California 92101 or telephone (619) 236-6700.

Section 9. NOTICE OF HEARING

City staff is directed to cause a notice of the hearing and the assessment ballots to be mailed at least forty-five (45) days before the date of the hearing, postage prepaid, to all proposed assessees, as determined by the City Treasurer pursuant to the criteria for assessed businesses as stated in Section 5 above. All such notices and balloting shall be performed in the manner and form provided for under the law.

BE IT FURTHER RESOLVED, that the Council does hereby declare that this activity is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Alex W. Sachs  
Deputy City Attorney

AWS:mm  
10/05/07  
10/15/07 revised  
Or.Dept:CPCI  
R-2008-317 revised  
MMS#5445

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ESTABLISHING A TOURISM MARKETING DISTRICT (TMD); LEVYING ASSESSMENTS UPON THE ASSESSED BUSINESSES FOR A PERIOD OF FIVE (5) YEARS; AUTHORIZING THE MAYOR OR HIS DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH THE SAN DIEGO TOURISM PROMOTION CORPORATION FOR THE OPERATION OF THE TOURISM MARKETING DISTRICT; AND PRESCRIBING A METHOD FOR COLLECTION OF ASSESSMENTS.

WHEREAS, on May 22, 2007, the Council of the City of San Diego adopted Ordinance O-19622 N.S., an ordinance amending Chapter 6, Article 1 of the San Diego Municipal Code by adding Division 25, the San Diego Tourism Marketing District Procedural Ordinance; and

WHEREAS, on October 15, 2007, the Council adopted Resolution Number R-303077, "A Resolution of Intention to Establish a Tourism Marketing District; To Levy Assessments for a Period of Five (5) Years; To Direct the Mailing of Ballots to Affected Businesses; to Set Dates for a Noticed Public Meeting for the Purpose of Receiving Testimony and a Public Hearing to Count Ballots, Consider Protests and Establish the District; and to Approve the Tourism Marketing District (TMD) Management Plan"; and

WHEREAS, the Council on Tuesday, November 20, 2007 at 10:00 a.m. conducted a public meeting in City Council Chambers, 202 "C" Street, 12<sup>th</sup> Floor, San Diego, CA., on the proposed TMD, wherein testimony in favor of and opposed to the proposed levying of assessments was permitted; and

WHEREAS, the Council of the City of San Diego directed staff to provide notice of the time and place fixed for the hearing as Monday, December 3, 2007 at 2:00 p.m., at which time any person interested in stating support for or opposition to the proposed levy of assessments, the proposed amount of the assessments, or the proposed activities of the TMD, could provide testimony as provided for pursuant to Resolution No. R-303077, adopted on October 15, 2007, as referenced above; and

WHEREAS, the time allocated for the filing of ballots in support of or in opposition to the proposed levies has duly passed; and

WHEREAS, the City Clerk has informed the Council that she has verified that a weighted majority of the proposed assessees that cast ballots did not vote in opposition to the *assessment and the establishment of the TMD, and, therefore, no majority protest exists; and*

WHEREAS, the Council of the City of San Diego declared in the aforementioned Resolution its intention to establish the TMD should there not exist a majority protest after the period for balloting. NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the San Diego Tourism Marketing District (TMD) is hereby established, and shall be established for a period of five (5) years, commencing on January 1, 2008 and terminating on December 31, 2012, pursuant to the procedures included in San Diego Municipal Code section 61.2501 *et. seq.*, the San Diego Tourism Marketing District Procedural Ordinance.

BE IT FURTHER RESOLVED, that the Council does hereby declare that, on the basis that a weighted majority of the proposed assessees that cast ballots did not vote in opposition to the proposed assessments, the protests are hereby overruled, and the assessments as described

below and in the TMD Management Plan, on file in the Office of the City Clerk as Document No. RR-\_\_\_\_\_, are hereby levied upon the affected businesses.

BE IT FURTHER RESOLVED, that the Mayor or his designee, on behalf of the City, is hereby authorized to enter into an agreement with the San Diego Tourism Promotion Corporation, a California non-profit mutual benefit corporation, for the administration of the TMD pursuant to San Diego Municipal Code section 61.2524.

BE IT FURTHER RESOLVED, that;

Section 1. PROPOSED ACTIVITIES

The proposed activities of the TMD consist in general of those items described in the TMD Management Plan, on file in the Office of the City Clerk as Document No. RR-\_\_\_\_\_. Marketing programs and services will be broadly defined by the Board of the non-profit San Diego Tourism Promotion Corporation (SDTPC), the entity charged with administration of the TMD. It is expected that marketing programs and services will take many traditional and/or innovative forms. In addition, marketing programs and services will be developed in order to benefit all assessed hotels within the TMD through a diverse mix of projects, programs and activities. Pursuant to San Diego Municipal Code section 61.2523, a report of activities is to be presented to the San Diego City Council on an annual basis. In addition, a summary of the expenditures for the TMD for the prior fiscal year, as well as an assessment of actual or expected return on investment of TMD expenditures shall be provided annually.

Section 2. AMOUNT OF ASSESSMENTS

The assessment amount shall be, and shall not exceed, two (2) percent of gross room revenue, minus exempt revenues, for lodging businesses with seventy (70) or more sleeping

rooms located within the TMD. Gross room revenue is defined as the "total consideration charged to a transient, as shown on the guest receipt for the occupancy of a room, or portion thereof, in a hotel." For purposes of the collection of assessments, gross room revenue minus exempt revenues may also be referred to as "assessable rents."

### Section 3. GROSS ROOM REVENUE FURTHER DEFINED

Gross room revenue shall also include such incidental items of consideration as equipment (i.e. rollaway beds, cribs, television sets, and similar items) and in-room services (i.e. movies and other services not subject to California taxes), valued in money, whether received or to be received in money, goods, labor or otherwise. Gross room revenue includes all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom.

### Section 4. EXCLUSIONS FROM ASSESSABLE RENTS

For purposes of the TMD assessment, assessable rents shall exclude those revenues either:

- (a) derived from a person who has exercised occupancy or was entitled to occupancy for more than one month where a month is defined as a period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists; or
- (b) where exempt by treaty or by Federal or State laws; or
- (c) where the payment is made directly by the United States Government or the State of California or their respective instrumentalities; or
- (d) where the total room rental charge is twenty-five dollars (\$25.00) per day or less.

When calculating the assessment, transient occupancy taxes (TOT) due shall not be included.

#### Section 5. BOUNDARIES OF THE DISTRICT

The boundaries of the Tourism Management District shall be the entire corporate limits of the City of San Diego.

#### Section 6. OPERATIONS OF DISTRICT; AMENDMENT TO MUNICIPAL CODE

The operations of the TMD shall be modified pursuant to any amendments to San Diego Municipal Code section 61.2501 *et. seq.*, the San Diego Tourism Marketing District Procedural Ordinance.

#### Section 7. BENEFITS TO ASSESSED BUSINESSES

The activities to be provided and funded under the assessments levied by the TMD are intended to benefit the businesses within the TMD. Revenues from the levy of assessments shall not be used to provide activities that directly benefit businesses outside the district, nor may they be utilized for any purpose other than purposes specified in the resolution of intention to establish the TMD. With this action, the City Council hereby finds that businesses within the TMD will be benefited by the activities funded by the assessments levied herein.

#### Section 8. ASSESSMENTS, IF PASSED ON TO TRANSIENT, MUST BE IDENTIFIED IN ANY AND ALL COMMUNICATIONS

Assessments imposed pursuant to the TMD are levied solely upon the assessed business, and the business owner or operator is solely responsible for payment of the assessment when due. If the owner or operator chooses to collect any portion of the assessment – up to and not to exceed two (2) percent of the assessable rent – from a transient, that portion shall be specifically



called out and identified for the transient in any and all communications from the business owner as a "San Diego Tourism Marketing District Assessment."

#### Section 9. COLLECTION OF ASSESSMENTS

The City Treasurer shall be responsible for the collection of the assessments levied under the TMD. Assessments submitted shall state the amount of the "assessable rent" being remitted. Remittances to the City Treasurer shall be at a rate of two (2) percent of the assessable rent.

#### Section 10. BUSINESS OWNER DUTIES AND ACCOUNTING PROCEDURES

The business owner shall be responsible for the submission of the TMD assessments, pursuant to the requirements of this Resolution and the TMD Procedural Ordinance, San Diego Municipal Code [Code] section 61.2501 *et. seq.*. For purposes of this resolution, "business owner" shall mean the party responsible for the remitting and reporting of Transient Occupancy Taxes (TOT), and shall be as defined in Code section 61.2504.

- (a) If passed on to the transient, the amount of the assessment, not to exceed two (2) percent of the assessable rent, shall be separately stated from the amount of room rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. A duplicate of the receipt given to each transient shall be kept by the business in accordance with subsection (c) below.
- (b) Each business shall account separately for, and maintain separate monthly summary totals for, taxable and non-taxable rent and for any assessments collected.
- (c) Each business shall maintain its financial and accounting records in accordance with established accounting principles acceptable to the City Treasurer. It shall be the duty of every business liable for the payment to the City of any assessment

imposed to keep and preserve, for a period of three years within the boundaries of this City, all business records as may be necessary to determine the amount of such assessment for which the business is liable for payment to the City. The City Treasurer and authorized deputies or agents in the exercise of duties imposed shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of assessment due. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the City Treasurer or the City Treasurer's duly-authorized City employee.

- (a) The costs of additional goods and services, which are not room rent, but which may be sold as a package, or are complimentary with a room, or portion thereof, in a business, shall be accounted for in accordance with any administrative rules and regulations promulgated by the City Treasurer.
- (b) If, for any reason, the business owner fails to remit the assessment due pursuant to this Resolution, and the business owner has chosen to pass the assessment on to the transient, then the City shall assert the business owner's full responsibility for payment of the TMD assessments due.
- (e) If, for any reason, a business owner passes on a TMD assessment to a transient at a TMD rate greater than the two (2) percent of assessable rent, it shall be the business owner's responsibility to refund or credit to the transient any assessments in excess of two (2) percent of assessable rent improperly collected.

Section 11. TIME AND MANNER FOR LEAVING THE ASSESSMENTS – REMITTING  
AND REPORTING REQUIREMENTS

- (a) Each business owner shall remit monthly the full amount of the assessment owed for the previous month utilizing the appropriate approved return form available from the City Treasurer. This obligation shall be effective from January 1, 2008 through December 31, 2012, the initial duration of the TMD established under this Resolution.
- (b) Returns and assessments remitted monthly by a business owner and actually received by the City Treasurer on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the assessments are delinquent and subject to the penalties imposed as described in Section 15 below.
- (c) Returns shall be made by each business owner on a calendar month basis unless a reporting basis other than a calendar month reporting period is approved by the City Treasurer. A business owner that desires to utilize a reporting period other than a calendar month reporting period must request and obtain written approval from the City Treasurer prior to the implementation of such reporting plan.
- (d) Each business owner reporting on a calendar month basis shall submit, on or before the last day of the following month, a return on the appropriate approved forms to the City Treasurer of the total assessable rent and the amount of the assessment due. At the time the return is filed, the full amount of the balance of the assessment due shall be remitted to the City Treasurer.
- (e) Each business owner reporting on an approved basis other than a calendar month basis shall submit, on or before the same day of the next month following the

close of such reporting period, or on the last day of that month if no corresponding calendar day exists, a return on the appropriate approved forms to the City Treasurer of the total assessable rent and the amount of the assessment due. At the time the return is filed, the full amount of the balance of the assessment due shall be remitted to the City Treasurer.

- (f) Returns filed and assessments remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and assessments is addressed to the City Treasurer, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.
- (g) All returns and payments submitted by each business owner shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.
- (i) The same basis for accounting used by a business owner for keeping books and records shall be used for reporting and remitting.

#### Section 12. REMITTING AND REPORTING REQUIREMENTS UPON CESSATION OF BUSINESS

- (a) A business owner transferring, selling or terminating its business shall notify the City Treasurer in writing of such sale, transfer or termination and the name and

address of the purchaser or transferee at least thirty (30) days in advance of the date of transfer, sale or termination, unless the decision to sell, transfer or terminate was made within less than a thirty (30) day period prior to the transfer, sale or termination, in which case the business owner shall then immediately notify the City Treasurer. The business owner shall, at the same time, notify the purchaser or transferee of seller or transferor's responsibility for unpaid assessments and shall further certify in writing to the City Treasurer that the transferee or purchaser was notified of the requirements of this resolution regarding the business owner's responsibility for unpaid assessments.

- (b) Upon cessation of business, each business owner shall, on or before the same day of the next month following the cessation of business or on the last day of that month if no corresponding day exists, make a return to the City Treasurer on approved forms of the total assessable rents charged, the amount of assessments owed for the reporting period, remittances made, if any, and the balance of the assessment due. At the time the return is filed, the full amount of the balance of the assessment due, if any, shall be remitted to the City Treasurer. After filing the final return and remitting the balance due, the business owner shall make his records of account available for a closeout audit by the City Treasurer or duly authorized City employee. Returns filed and assessments remitted and actually received by the City Treasurer on or before the same day of the next month following the cessation of business or on the last day of that month, if no corresponding calendar day exists, shall be deemed timely filed and remitted;

otherwise, the assessments are delinquent and subject to the penalties imposed pursuant to Section 15 below.

- (c) Terms of liability of the business transferee or purchaser for TMD assessments owed by the transferor or seller are set forth in Sections 13 and 14 below.
- (d) Any business owner who fails to comply with the provisions of subsections (a) or (b) above may be subject to appropriate criminal, civil or administrative remedies.

#### Section 13. DUTY OF SUCCESSOR OF BUSINESS OWNER

If a business owner who is liable for any assessment or penalties under this Resolution sells or otherwise disposes of his business, his successor shall notify the City Treasurer of the date of sale at least thirty (30) days before the date of sale or, if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such assessment or penalty until the selling business owner produces a receipt from the City Treasurer showing that the assessment or penalty has been paid or an assessment clearance certificate from the City Treasurer stating that no assessment or penalty is due. If the seller of the business does not present a receipt or assessment clearance certificate within thirty (30) days after a successor business owner commences business, the successor shall deposit the withheld amount with the City Treasurer pending settlement of the account of the seller.

#### Section 14. LIABILITY OF SUCCESSOR FOR FAILURE TO WITHHOLD: NOTICE OF AMOUNT DUE

If the successor to the business owner fails to withhold a portion of the purchase price as required, it shall be liable to the City for the payment of the amount required to be withheld.

Within thirty (30) days after receiving a written request from the successor for an assessment clearance certificate stating that no assessment or penalty is due, the City Treasurer shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the City Treasurer of the estimated amount of the assessment and penalty that must be paid as a condition of issuing the certificate.

#### Section 15. PENALTIES

Should any business fail to pay assessments to the City Treasurer as required under San Diego Municipal Code section 61.2501 *et. seq.* or this Resolution of Establishment, such businesses are subject to the following penalties in the event of delinquency, fraud or audit deficiencies:

- (a) Delinquency. Any business owner who fails to remit any assessment imposed by this Resolution within the time required shall pay a penalty computed at the rate of one percent (1%) for the first day of delinquency and one-third of one percent (1/3 of 1%) for each day thereafter, including Saturdays, Sundays, and holidays, but not to exceed twenty-five percent (25%) of the amount of the assessment due and payable for the entire reporting period in addition to the amount of the assessment.
- (b) Fraud. If the City Treasurer determines that the nonpayment of any remittance due under this resolution is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.
- (c) Audit Deficiency. If, upon audit by the City, a business owner is found to be deficient in either its return or its remittance, or both, the City Treasurer shall

immediately invoice the business owner for the amount of the net deficiency plus a penalty of ten percent (10%) of the net deficiency. If the business owner fails or refuses to pay the deficient amount and applicable penalties within fourteen (14) days of the date of the City Treasurer's invoice, an additional penalty shall be imposed at the rate of one-third of one percent ( $1/3$  of 1%) per day of the net deficiency, not to exceed fifteen percent (15%) for a combined total penalty not to exceed twenty-five percent (25%) of the net deficiency.

Section 16. FAILURE TO REPORT ASSESSMENTS DUE — JEOPARDY  
DETERMINATION

- (a) Determination of Assessments Due by City Treasurer. If any business owner shall fail or refuse to remit the assessment or to make, within the time provided in this Resolution, any report or remittance of said assessment or any portion thereof required by this Resolution or if such business owner maintains records which are inadequate to show the amount of assessment due, the City Treasurer shall forthwith determine the assessment due and penalties provided for by this Resolution against the business owner.
- (b) Jeopardy Determinations. When a business owner fails or refuses to make or file a timely return or remittance of assessments due, or when the City Treasurer or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures or by estimation if no records are available, that a business owner is or will be unable to remit any assessments due at the prescribed time, the City Treasurer may make a written Jeopardy Determination which shall be issued to the business owner to require the business owner to thereafter furnish



additional information or provide adequate security as necessary to ensure receipt by the City of any assessments due or to become due, and to remit the assessments on a daily or weekly basis. The business owner shall thereafter report and remit all assessments due under the terms and conditions prescribed by the City Treasurer. The City Treasurer shall cancel the requirements imposed under the Jeopardy Determination once timely accounting and remittance procedures have been established and the business owner is satisfying all obligations imposed by law for the remittance of assessments.

- (c) Notice. The City Treasurer shall deliver notice of the assessment due or of the Jeopardy Determination to the business owner or deposit it in the United States mail, postage prepaid, addressed to the business owner at the last known place of business.
- (d) Penalties collected pursuant to this Section shall be returned to the TMD fund, while any direct administrative costs accrued by the City Treasurer or other City departments for the recovery of TMD assessments and penalties due prior to a referral to the City Treasurer's Collections Division may be charged to the TMD fund as a portion of the City's allowable costs for administration of the TMD.
- (e) If TMD remittances become delinquent and the City Treasurer makes a determination to refer that delinquency to the Treasurer's Collections Program, any additional costs incurred, including the Collections Program's referral fees and interest, shall be chargeable to and payable by the business operator and shall not be a liability of the TMD under any circumstances.

Section 17. ADMINISTRATIVE REMEDIES OR APPEALS

- (a) The business owner may, within fourteen (14) days after the serving or mailing of such notice of assessment due or Jeopardy Determination, make application in writing to the City Treasurer for a hearing on the amount assessed as due. If timely application for a hearing is not made, the assessment due and penalties as determined by the City Treasurer shall become final and conclusive and immediately due and payable. If such application is made, the City Treasurer shall give not less than five (5) days written notice in the manner prescribed herein to the business owner of the time and place for a hearing before a board consisting of the City Treasurer, the City Auditor and Comptroller and the Financial Management Director or the duly-appointed deputy of each. At the hearing, the business owner may appear and offer evidence why the specified amount due and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper assessment to be remitted. After the hearing, the City Treasurer shall give written notice to the business owner in the manner prescribed herein of the determination and the amount of such assessment due and penalties. If the amount remaining in dispute thereafter does not exceed \$750.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the business owner's administrative remedies. Any amount found to be due shall be payable within fourteen (14) days of the serving or mailing of the determination of the assessment due unless a further appeal is filed with the Mayor as provided in this section within that fourteen (14) day period for any amount in excess of \$750.00.

- (b) When an appeal from the hearing board for remaining assessments and penalties exceeding \$750.00 is filed, the Mayor shall cause the appeal to be assigned to a Hearing Officer, who shall schedule a hearing to be heard within a reasonable time thereafter. The Hearing Officer shall be appointed by the Mayor, shall be a member of the California State Bar and shall not be a City employee. The Hearing Officer shall be compensated by The City of San Diego for the time spent on deciding an appeal, with such compensation chargeable to the TMD fund as a portion of the City's allowable costs for administration.
- (c) The appellant and the Mayor or Mayoral designee shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The Hearing Officer shall have the power to compel attendance of witnesses and documents by Subpoena in accordance with the Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs shall be admissible. Hearsay evidence may be considered by the Hearing Officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.
- (d) The Hearing Officer is authorized to rule upon issues of law or fact and to determine the amount of the assessment due or penalty in accordance with this Resolution. The Hearing Officer shall not have any jurisdiction to waive, mitigate

or suspend the City's collection of any assessment due or penalty found to be duly imposed.

- (e) The decision of the Hearing Officer shall be issued in writing no later than fourteen (14) days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the Mayor and any Mayoral designee. Any amounts due shall be immediately payable to the City Treasurer.
- (f) The Mayor or Mayoral designee shall promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

#### Section 18. REFUNDS

- (a) Whenever the amount of any assessment due or penalty has been overpaid, paid more than once or erroneously received by the City under the procedures prescribed in this Resolution, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Treasurer within three years of the date of payment. The claim shall be on forms available from the City Treasurer.
- (b) A business owner may claim a refund or take as a credit against assessments remitted the amount overpaid or paid more than once when it is established in a manner prescribed by the City Treasurer that the assessments remitted were derived from assessable rents which should have been deemed exempt from an assessable rent calculation pursuant to Section 4 above; provided, however, in the event the business owner passed the assessment onto a transient, that neither a

refund nor a credit shall be allowed by the City unless the amount of the assessment passed on has either been refunded to the transient or credited to rent subsequently payable by the transient to the business owner.

- (c) A transient may obtain a refund of assessments overpaid or paid more than once or erroneously received by the City by filing a claim in the manner provided in subparagraph (a) of this section, but only when the transient having paid the assessment to the business owner establishes to the satisfaction of the City Treasurer that the transient has been unable to obtain a refund from the business owner who had passed on the assessment to the transient and then remitted the assessment to the City.
- (d) A business owner who has remitted an amount in excess of the amount required to be paid by this resolution may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the business owner. Such credit, if approved by the Treasurer, shall be applied to any deficiency found or any further assessment payments due under the rules prescribed by the Treasurer.
- (e) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

#### Section 19. ACTIONS TO COLLECT ASSESSMENTS DUE

Any business owner owing money to the TMD, as collected by the City Treasurer under the provisions of this Resolution, shall be liable to an action brought in the name of The City of San Diego for the recovery of such amount due the TMD. Upon the concurrence of the City Attorney and the City Auditor and Comptroller, the City Treasurer is authorized to compromise

the collection of the amount due or establish a schedule of payment for any assessments due, or to discontinue the collection of any claim if it appears that further proceedings would be without merit.

#### Section 20. VIOLATIONS

Any business owner who willfully fails to file any return required by this Resolution, or who files a false return, or who willfully fails or refuses to remit any assessment due, or who refuses to allow an audit to be conducted, may be subject to appropriate criminal, civil or administrative remedies.

#### Section 21. TREASURER'S REGULATIONS AND ENFORCEMENT AUTHORITY

The City Treasurer is hereby authorized to may promulgate reasonable rules, interpretations and regulations to implement and enforce the provisions of this Resolution.

BE IT FURTHER RESOLVED, that, upon the adoption of this Resolution, the City Clerk is hereby directed to record a notice of the levying of the assessments and map of the TMD district pursuant to San Diego Municipal Code section 61.2512.

BE IT FURTHER RESOLVED, that if any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution, or any part thereof is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

BE IT FURTHER RESOLVED, that the Council does hereby declare that this activity is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE; City Attorney

By Alex W. Sachs  
Alex W. Sachs  
Deputy City Attorney

AWS:mm  
11/27/07  
Or.Dept:CPCI  
R-2008-451  
MMS#5605

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

## CITY OF SAN DIEGO

**OFFICIAL NOTICE  
PROPOSED ESTABLISHMENT  
SAN DIEGO TOURISM MARKETING DISTRICT  
AND ASSESSMENT**

**WHY DID YOU RECEIVE THIS NOTICE AND BALLOT?**

Over the last few years local lodging industry leadership began discussing alternative funding sources and available options for effective and competitive destination marketing. A working group comprised of lodging industry representatives held dozens of meetings with proposed assessed businesses, stakeholder groups and interested parties. This coalition of lodging business owners and managers representing the San Diego County Hotel Motel Association and the San Diego Lodging Industry Association, developed the concept of a Tourism Marketing District for San Diego in order to generate a guaranteed revenue stream to fund marketing programs to increase tourism and promote the City of San Diego as a tourist, meeting, convention and special event destination.

On October 15, 2007 the City Council adopted Resolution Number R-303077 titled "A Resolution of intention to Establish a Tourism Marketing District; To Levy Assessments for a Period of Five (5) Years; To Direct the Mailing of Ballots to Affected Businesses; to Set Dates for a Noticed Public Meeting for the Purpose of Receiving Testimony and a Public Hearing to Count Ballots, Consider Protests and Establish the District; and to Approve the Tourism marketing District (TMD) Management Plan."

In accordance with this Resolution by the City Council a ballot and notice is being mailed to the affected hotel businesses.

The proposed San Diego Tourism Marketing District (TMD) is an assessment district encompassing the entire city wherein, over the next five years, hotels with 70 or more sleeping rooms would pay an assessment of 2% of non-exempt gross room revenues in order to provide a funding source for marketing and promotion of San Diego to enhance tourism activity and hotel room night consumption.

Included with this notice is a ballot allowing the person authorized to sign the ballot to indicate whether the hotel business supports or opposes approval of the proposed assessment associated with the establishment of the San Diego Tourism Marketing District. The person signing must declare, under penalty of law, that they are authorized by the entity that would be liable to pay the assessment\* levied on the hotel business identified on this official ballot.

**TOTAL INITIAL ANNUAL ASSESSMENTS**

Based on the City's records for FY2007 the proposed Tourism Marketing District assessment will raise approximately \$26.893 million in the first year.

**DURATION OF THE PAYMENTS**

The District is proposed to be established for five (5) years starting on January 1, 2008. It is proposed that during the five years the assessments to be remitted on a monthly basis to the City Treasurer by each hotel business using a self-reporting form that identifies the accounting periods for the previous month and the



applicable gross room revenue (less any exempt revenue) and District assessment for each of those accounting periods.

### **BASIS AND METHOD OF LEVYING THE ASSESSMENT**

Assessments levied on businesses shall be levied on the basis of the degree of estimated benefit to the businesses within the tourism marketing district. The proposed assessment is a percentage of gross room revenue, and so when a hotel's revenue increases from the enhanced tourism marketing services provided through the Tourism Marketing District, the real dollar amount of the assessment will increase proportionately.

Assessments levied for the purpose of providing improvements and promoting activities that benefit businesses are not taxes for the general benefit of a city, but are assessments for the activities which confer benefits upon the assessed businesses for which the activities are provided.

The annual assessment is based upon 2% of gross room revenue less exempt revenues from transient stays for lodging businesses with 70 or more sleeping rooms operating within the City of San Diego. The rate of 2% will remain fixed for the duration of this District.

The amount of the proposed assessment on your hotel business on an annual basis may be calculated by using an estimate of annual gross room revenue and an estimate of exempt revenues for the same period and applying this formula:

$$\text{Assessment} = 2\% \times [\text{Gross room revenue less exempt revenues}]^*$$

Gross room revenue means the total consideration charged to a transient, as shown on the guest receipt for the occupancy of a room, or portion thereof, in a hotel and includes consideration for incidentals such as equipment (i.e. rollaway beds, cribs, television sets, and similar items) and in-room services (i.e. movies and other services not subject to California taxes).

Exempt revenues are those revenues either derived from a person who has exercised occupancy or was entitled to occupancy for more than one month where a month is defined as a period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists; or where exempt by treaty or by Federal or State laws, or where the payment is made directly by the United States Government or the State of California or their respective instrumentalities; or where the room charge is \$25 a day or less.

Transient occupancy taxes should not be included when calculating the assessment.

\* Questions regarding the calculation of the estimated assessment may be directed to:  
Meredith Dibden Brown, Program Manager, City Planning & Community Investment,  
1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

### **ASSESSED BUSINESSES**

The assessment is proposed to be levied upon each lodging business of 70 or more sleeping rooms in the City of San Diego. Business means any and all types of hotels where a structure, or any portion of a structure, is held out to the public as being occupied, or designed for occupancy, by transients for dwelling, lodging or sleeping purposes. Transient means any person who exercises occupancy, or is entitled to exercise occupancy, by reason of concession or other agreement for a period of less than one (1) month.

The assessment imposed is levied solely upon the lodging businesses within the district and would be remitted by the party responsible for remitting and reporting the Transient Occupancy Tax to the City. If the *business owner*, i.e. the owner, operator, or authorized representative, chooses to collect any portion of the assessment from a transient, that said portion shall be specifically called out and identified for the transient in any and all communications from the *business owner* as a "San Diego Tourism Marketing District Assessment."

#### **TOURISM MARKETING DISTRICT MANAGEMENT PLAN**

Representatives of the San Diego Lodging Industry have formalized a Tourism Marketing District Management Plan (Management Plan) which provides a framework for implementing a tourism marketing district. The District Management Plan is a five (5) year plan and will terminate with the expiration of the District. Each activity of the District will have its own schedule, but none will last longer than the duration of the District.

Copies of the Management Plan were distributed with petitions by the San Diego County Hotel Motel Association and the San Diego Lodging Industry Association during the petition drive to establish the District. To request a copy of the Management Plan please contact Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

#### **LOCATION**

The Proposed Tourism Marketing District will be citywide, inclusive of all areas within the city limits of the City of San Diego. No benefit zones are proposed within the District. A map of the District is included in the Management Plan as Appendix A and is included with this notice for reference.

#### **INSTRUCTIONS FOR THE COMPLETION, RETURN AND TABULATION OF OFFICIAL BALLOTS**

This ballot may be completed by a person authorized to sign the ballot by the entity that would be liable to pay the assessment\* levied on the hotel business identified on the official ballot. The purpose of the ballot is to indicate whether the hotel business supports or opposes approval of the proposed assessment associated with the establishment of the San Diego Tourism Marketing District. The person signing must declare, under penalty of law, that they are authorized to do so by the entity that would be liable to pay the assessment. The following steps apply for completion of the balloting process.

Verify that the Hotel Name and Hotel Location as listed on the ballot is correct. If they are not correct, please contact Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

Fill in or clearly mark the oval next to the word "YES" or "NO" to approve or disapprove of the proposed assessment associated with the proposed establishment of the San Diego Tourism Marketing District. Please use a pen to complete the ballot.

After marking your vote and completing the fill in sections, simply fold the ballot and place it in the return envelope provided, affix proper postage and return it immediately.

Only official ballots which are marked Yes or No to indicate support or opposition to the assessment and which are signed and dated, with the printed name and title of the signatory, as well as the name of the hotel proprietor affixed, shall be counted.

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If you make a mistake in completing your ballot or wish to change or withdraw your ballot, please contact Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

To be tabulated, ballots **MUST** be received before the end of the public input portion of the public hearing scheduled for Monday, December 3, 2007 at 2:00 p.m. in the City of San Diego Council Chambers on the 12<sup>th</sup> Floor of the City Administration Building located at 202 C Street, San Diego, California 92101.

You may return your ballot in the following ways:

- 1.) Mail your ballot to the address shown on the enclosed return envelope so that it is received before the public hearing is held on Monday, December 3, 2007.
- 2.) Deliver it to the City Clerk's office located at 202 C Street, 2<sup>nd</sup> Floor, San Diego, CA 92101, before the public hearing on Monday, December 3, 2007.
- 3.) Deliver it in person at the December 3, 2007 public hearing.

Your ballot will be counted on a weighted basis. That is, the City will estimate the annual amount of the assessment for your hotel business based on City records for FY2007 and will weight your vote by this estimated assessment.

#### **MAJORITY PROTEST**

If a majority of the ballots, by weighted vote, do not support the assessment then the District shall not be *established and the assessment shall not be levied*.

#### **PUBLIC MEETING AND PUBLIC HEARING**

You may also speak in support of or in opposition to the proposed assessment that would be levied in association with the establishment of the proposed San Diego Tourism Marketing District at a public meeting to be held on November 20, 2007 at 10 a.m. in the City of San Diego Council Chambers on the 12<sup>th</sup> Floor of the City Administration Building located at 202 C Street, San Diego, California 92101.

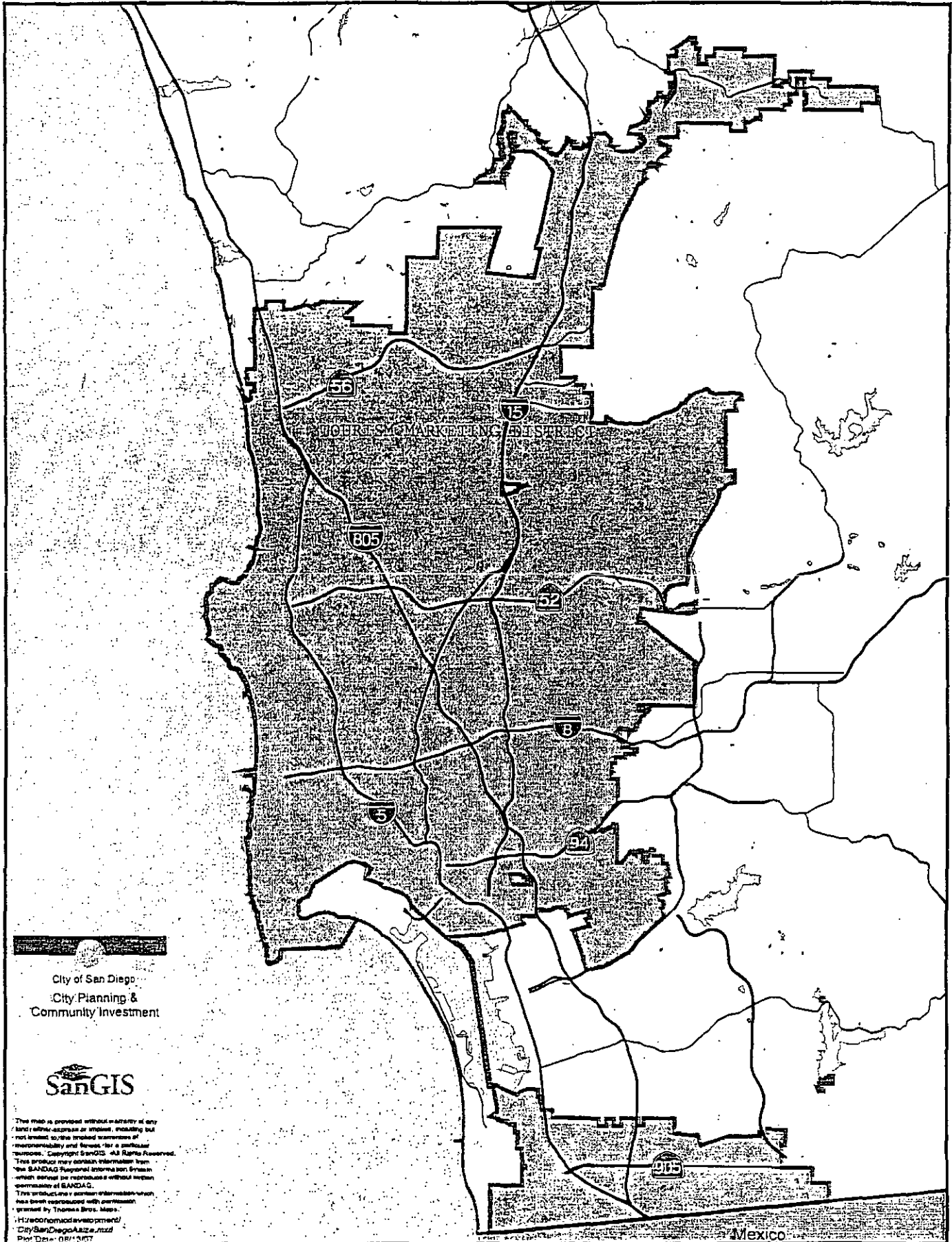
Additionally, you may also speak in support of or in opposition to the proposed assessment that would be levied in association with the establishment of the proposed San Diego Tourism Marketing District at the public hearing scheduled for Monday, December 3, 2007 at 2:00 p.m. in the City of San Diego Council Chambers on the 12<sup>th</sup> Floor of the City Administration Building located at 202 C Street, San Diego, California 92101.

You are invited to attend the public meeting and the public hearing.

For any other questions or concerns please contact Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

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## City of San Diego



City of San Diego  
City Planning &  
Community Investment

**SanGIS**

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Print Date: 08/11/07

Mexico

CITY OF SAN DIEGO  
OFFICIAL BALLOT

SAN DIEGO TOURISM MARKETING DISTRICT ASSESSMENT

- ☐ YES I approve the proposed assessment associated with the establishment of the San Diego Tourism Marketing District for the purpose of improving tourism activity and hotel room night consumption in the City of San Diego.
- ☐ NO I do not approve the proposed assessment and therefore do not support the establishment of the San Diego Tourism Marketing District for the purpose of improving tourism activity and hotel room night consumption in the City of San Diego.

*I hereby declare, under penalty of law, that I am authorized to sign this ballot by the entity that would be liable to pay the assessment\* levied on the hotel business identified on this official ballot. I am the*  
☐ owner, ☐ operator, or ☐ authorized representative  
*(please check the applicable box)*  
*of the identified hotel which has 70 or more sleeping rooms.*

Signed \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_ No. of Rooms: \_\_\_\_\_

Name of Hotel Proprietor: \_\_\_\_\_

Hotel Name: \_\_\_\_\_

Hotel Location: \_\_\_\_\_

Cert. No.: 0

\* Questions regarding the calculation of the estimated assessment may be directed to Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 telephone (619) 236-6700.

ASSESSMENT INFORMATION

Based on the City's records for FY2007 the proposed Tourism Marketing District assessment will raise approximately \$26.893 million in the first year.

The amount of the proposed assessment on your hotel business on an annual basis may be calculated by using an estimate of annual gross room revenue and an estimate of exempt revenues for the same period and applying this formula:

$$\text{Assessment} = 2\% \times [\text{Gross room revenue less exempt revenues}]^*$$

Gross room revenue means the total consideration charged to a transient, as shown on the guest receipt for the occupancy of a room, or portion thereof, in a hotel, and includes consideration for incidentals such as equipment (i.e. rollaway beds, cribs, television sets, and similar items) and in-room services (i.e. movies and other services not subject to California taxes).

Exempt revenues are those revenues either derived from a person who has exercised occupancy or was entitled to occupancy for more than one month where a month is defined as a period of consecutive days from the first calendar day of occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists; or where exempt by treaty or by Federal or State laws, or where the payment is made directly by the United States Government or the State of California or their respective instrumentalities; or where the room charge is \$25 a day or less.

Transient occupancy taxes should not be included when calculating the assessment.

Your ballot will be counted on a weighted basis. That is, the City will estimate the annual amount of the assessment for your hotel business based on City records for FY2007 and will weight your vote by this estimated assessment.

If the District is established and the *business owner*\*\* chooses to collect any portion of the assessment from a transient, that said portion shall be specifically called out and identified for the transient in any and all communications from the business owner as a "San Diego Tourism Marketing District Assessment."

\*\*Business owner means the owner, operator, or authorized representative pursuant to San Diego Municipal Code Section 61.2504

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## INSTRUCTIONS FOR THE COMPLETION, RETURN AND TABULATION OF OFFICIAL BALLOTS

This ballot may be completed by the person authorized to sign this ballot by the entity that would be liable to pay the assessment\* levied on the hotel business identified on this official ballot by completing the following steps.

Verify that the Hotel Name and Hotel Location as listed on the ballot is correct. If they are not correct, please contact Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

Fill in or clearly mark the oval next to the word "YES" or "NO" to approve or disapprove of the proposed assessment associated with the proposed establishment of the San Diego Tourism Marketing District. Please use a pen to complete the ballot.

After marking your vote and completing the fill in sections, simply fold the ballot and place it in the return envelope provided, affix proper postage and return it immediately.

**Only official ballots which are marked Yes or No to indicate support or opposition to the assessment and which are signed and dated, with the printed name and title of the signatory, as well as the name of the hotel proprietor affixed, shall be counted.**

If you make a mistake in completing your ballot or wish to change or withdraw your ballot, please contact Meredith Dibden Brown, Program Manager, City Planning & Community Investment, 1200 Third Avenue, 14th Floor, San Diego, California 92101 or telephone (619) 236-6700.

To be tabulated, ballots MUST be received before the end of the public input portion of the public hearing scheduled for Monday, December 3, 2007 at 2:00 p.m. in the City of San Diego Council Chambers on the 12<sup>th</sup> Floor of the City Administration Building located at 202 C Street, San Diego, California 92101.

You may return your ballot in the following ways:

- 1.) Mail your ballot to the address shown on the enclosed return envelope so that it is received before the public hearing is held on Monday, December 3, 2007.
- 2.) Deliver it to the City Clerk's office located at 202 C Street, 2<sup>nd</sup> Floor, San Diego, CA 92101, before the public hearing on Monday, December 3, 2007.
- 3.) Deliver it in person at the December 3, 2007 public hearing.

At the public hearing the Council shall consider all protests against the proposed assessment and the ballots shall be tabulated by the City Clerk. The Council shall not impose an assessment if there is a majority protest. A majority protest exists if upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected businesses.

### MAJORITY PROTEST

If a majority of the ballots, by weighted vote, do not support the assessment then the District shall not be established and the assessment shall not be levied.

### PUBLIC MEETING AND PUBLIC HEARING

You may also speak in support of or in opposition to the proposed assessment that would be levied in association with the establishment of the proposed San Diego Tourism Marketing District at a public meeting to be held on November 20, 2007 at 10 a.m. in the Council Chambers.

Additionally, you may also speak in support of or in opposition to the proposed assessment associated with the establishment of the proposed San Diego Tourism Marketing District at the public hearing scheduled for Monday, December 3, 2007 at 2:00 p.m. in the Council Chambers.

**You are invited to attend the public meeting and the public hearing which will both be held in the City of San Diego Council Chambers on the 12<sup>th</sup> Floor of the City Administration Building located at 202 C Street, San Diego, California 92101.**

000428

A Simple Solution  
By Ian Trowbridge

Monday, Nov. 12, 2007 | San Diegans have always been unwilling to pay for public services they demand. After the most recent wildfires they need to decide what services they want and how much they are willing to pay for them.

One painless source of funding for city residents is to increase the transient occupancy tax (TOT), the tax charged visitors to San Diego based on their room rate. However, the San Diego public has repeatedly rejected proposals to increase its TOT rate from 10.5 percent to the 13-14 percent TOT charged in other major California cities (in Los Angeles and San Francisco TOT is currently 14 percent). Seattle's TOT rate is 16 percent. Does anyone really think that increasing room rates by \$3 to \$5 per night would lead potential visitors to cancel their vacation in San Diego with its weather, beaches, Zoo, Balboa Park, the Wild Animal Park and SeaWorld? If so, they would be unlikely to contribute much to the local economy even if they did visit.

Regrettably, in the past the hotel industry in San Diego has spent hundreds of thousands of dollars to defeat propositions that don't give the money raised by a TOT increase to them. That is no longer an issue now that the hotel industry has proposed a Tourism Marketing District in a civic-minded action whereby they raise 2 percent equivalent of TOT to promote their own businesses. They are no longer asking for corporate welfare using taxpayer money. That is quite appropriate for businessmen and women who value a free market and individual responsibility. Despite the fact that the initial board of directors consisting of nine individuals seems to be self-appointed and does not include a single woman, those are issues for the hotel industry to resolve as private organizations.

We should not nitpick the proposed Tourism Marketing District that in essence is a Business Improvement District similar to those found throughout San Diego; we should thank the hotel industry for their contribution to putting the city back on a sound fiscal footing.

Everyone knows that we have an understaffed Police Department that is compromising public safety. We need better wildfire prevention and equipment to fight fires in downtown such as ladders that can reach the upper levels of high-rise buildings. We also need more fire stations throughout the city.

A 3 percent increase in TOT would have a minimal effect on San Diego residents and would reflect the cost to the city in providing safety services to the hotels and their clients.

000430

I suggest that these TOT funds estimated to be \$45 million dollars in FY 2008 by the Office of the Independent Budget Analyst be dedicated to police and fire so no-one can argue the City Council would simply waste the money.

I hope the City Council will show the leadership to place a 3 percent TOT increase as a Proposition written in simple English on the November ballot if public discussion shows significant support for the idea.

Ian Trowbridge is a local activist and former Salk Institute professor. Agree? Disagree? Send a letter to the editor.



000431

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**From:** iantrowbridge [mailto:chris70@cox.net]  
**Sent:** Sunday, November 18, 2007 11:51 PM  
**To:** Maland, Elizabeth  
**Subject:** The hospitality Industry is doing just fine according to the President of ConVis

Liz: can you E-mail this article to council offices too and follow up with a hard copy. I'd do it myself but they are more likely to read something you send.

Ian

LINK <http://www.sandiego-online.com/media/San-Diego-Magazine/June-2007/David-Peckinpaugh/>

SAN DIEGO MAGAZINE / JUNE 2007 / DAVID PECKINPAUGH  
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## David Peckinpaugh

### Dialogue with Tom Blair

APPOINTED PRESIDENT and CEO of San Diego's Convention & Visitors Bureau last summer, David Peckinpaugh found himself facing a sea of dicey issues, from budget cuts to political vendettas to personality clashes. By all accounts, he's navigated that sea amazingly well. And he's still smiling. At 49, it's his first assignment as head of a tourism bureau. But his 23 years in the hospitality industry include a stint as vice president of the MGM Grand Hotel & Casino in Las Vegas and two tours of duty at San Diego destination hotels--the downtown Hyatt Regency and La Costa Resort & Spa. Peckinpaugh lives in Poway with his wife, Jill, 10-year-old daughter, Samantha ("Sam"), and son, Max, who's 7.

**TOM BLAIR:** Next month, you'll be celebrating your first anniversary with ConVis. A year at the helm of an organization charged with the marketing of San Diego's third-largest industry, tourism. What's your sense of the health of our visitor industry?

**DAVID PECKINPAUGH:** The overall industry is very healthy. We just came off a record year.

11/19/2007

000432

Attendance was up at the attractions; we had all-time record occupancy for hotels . . .

**TB:** You're talking about 2006, a new record after a 2005 record of \$5.9 billion?

**DP:** Yes--\$6.9 billion direct visitor spending last year. The forecast for '07 is basically flat for hotel occupancy, but that has more to do with the increase in rooms coming on line. The average room rate is predicted to be up by the end of the year, by 5 to 6 percent.

**TB:** Historically, the city's TOT, the transient occupancy tax on hotels and motels, has provided the bulk of the budget for convention and visitor marketing. But with the city's propensity for finding new ways to spend that money, the ConVis share has been shrinking in recent years. Your predecessor saw his funding from the city shrink from \$14 million a year in 2003 to \$8.8 million last year. What kind of shape are you in now?

**DP:** Well, before I got here, all the cuts had predominantly happened. It had gone from a staff of 102 down to 59. So the majority of the slashing and burning had occurred. We're more in the recovery and stabilization mode--and looking to the future for growth. We're preparing for, hopefully, future funding and looking at what we need to do to continue to grow. Because the supply of rooms is going to continue to grow over the next three to five years and longer, we have to keep driving new visitors to the destination just to maintain what we have, let alone grow it.

**TB:** Well, maybe you'd better be careful, because as your funding has been shrinking, the industry has been growing at a record rate every year.

**DP:** (Laughs.) Well, the figures lag behind. You can stop investing, and you're not going to feel it in year one, two or three. But it's years three to five to seven where you're going to see that drop-off in production. And it's happening at a time when we can't afford it--because of the increased supply and the incredible change that's happening in the competitive marketplace.

**TB:** Before you took the job here, you were the head of an \$80 million corporation that specialized in meeting planning. But over the past several years, the San Diego Convention Center Corporation has taken on more and more responsibility for the marketing of meetings and conventions here. That produced something of a tug-of-war between convention center management and your predecessor at ConVis, Reint Reinders. What's your relationship with convention center boss Carol Wallace?

**DP:** It has been great. In my first year, I came in and talked about the three Ps--people, planning and performance. On the people side, it's not only the people here at ConVis, it's all of our stakeholders and those key relationships within the industry. And the number-one relationship that needed to be addressed was with the convention center. There was a lot of mistrust and miscommunication. I think Carol and I got together within my first 14 days here, and we have met once a month since then. On a scale of 1 to 10, we're probably at a

It comes down to the overall mix of the destination. That's where I think we're really rich; we've got more assets than any other destination in the country. It is not just our big three or four attractions that bring people here. Certainly, we still do a lot of co-op advertising with those big attractions, but we're

**000433****also trying to diversify.**

7 or 8 on the relationship scale. We've got two assigned champions, one on each side, who are responsible for the day-in, day-out communication, so we avoid missteps and misunderstanding. We have a work group that meets about once a quarter to look at how we can better collaborate and where opportunities for cooperation exist. So much comes down to communication and the ability to sit down and be honest and build trust by being true to our word. Also, relationships with others, like San Diego North CVB and San Diego East CVB, that were not in the best of shape--we've done very similar things with them. And then it comes down to the second P, the plan. We're now in the execution phase of a new strategic plan, and we've assigned champions to each of those relationships, and we're developing written plans for each. Then we come to the third P, performance, and I'm going to be held accountable for that.

**TB:** You've used that word "champion" twice. Is that a new buzz word?

**DP:** I've used it for a long time. That's the key person in each relationship responsible for communication and responsibility and accountability for resolving issues. If you don't have someone who owns that relationship, it's going to falter.

**TB:** San Diego's hotel and motel operators have expressed frustration for years at the dwindling resources available for promotion of their industry. Now, they've decided to levy a 2 percent tax on themselves to pay for their own marketing arm through a Tourism Marketing District (TMD). Will that weaken the influence of ConVis? Do you think the city will see that as an opening to make further cuts in its contribution of TOT funds to ConVis?

**DP:** As far as influence, the Hotel-Motel Association and Lodging Industry Association have been working very closely since the first of the year to get this moving forward. We are not at the table; we'll be a beneficiary, so we're in the role of key interested party. ConVis will be guaranteed a minimum of 50 percent of the money raised from the assessment--it's not a tax--and that would get us back to our original funding of four to five years ago. And then we'll have the ability to apply for additional funds based on a program of work. Say if we came to the TMD board and said, "We have a three- or five-year campaign to grow business out of China," they would be able to make a decision to fund that above and beyond our 50 percent.

**TB:** Los Angeles has traditionally provided San Diego with the lion's share of visitors, mostly weekend getaways. Has the record-high price of gasoline had any negative effect on that market?

**DP:** You know, it really hasn't. We did a lot of analysis of that last summer. And AAA did a study. And we both came out with a finding that it was really having zero impact on the traveler. If you look at the overall budget of a traveler making a decision to visit, by the time they're doing hotel rooms and restaurants and attraction tickets, et cetera, the cost of fuel was really minor. It's something we're always keeping an eye on. If it went to \$10 a gallon we'd probably have an issue, but in the area we're looking at, the projections for the summer indicate we'll be fine.

**TB:** The big three for-profit tourist attractions here--SeaWorld, the San Diego Zoo/ Wild Animal Park and Legoland--have for years been a major lure for visitors. But our theme parks have been more vulnerable lately to competition from Los Angeles and Orange County. What is ConVis doing to find new ways of attracting tourists?

**000434**

**DP:** It comes down to the overall mix of the destination. That's where I think we're really rich; we've got more assets than any other destination in the country. It is not just our big three or four attractions that bring people here. Certainly, we still do a lot of co-op advertising with those big attractions, but we're also trying to diversify. One thing is the San Diego Soundscape promotion. There's an example of using a relatively unknown or unexposed asset of the local destination in a unique way to drive demand toward the destination as a whole.

**TB:** Your latest marketing campaign includes a promotion involving San Diego's independent rock music scene. The promo includes a two-CD set featuring local artists in radio spots and a Web site aimed at getting Gen-Xers to book music-related travel to San Diego. How's it working?

**DP:** A big partner in this is Insomnia Radio, an Internet station, and their core demographic is 32 to 54, which is one of our ideal targets. So it doesn't skew as young as you would think. Initially, I wondered if it would be talking to the audience we want. It turns out it's exactly who we want. It's very new, and we still have big promotions coming up with VH1. But one of the bands on the CD has already been signed to a recording contract because of radio play and the Web site recognition. And they've got e-mails from people as far away as Japan to find out when and where they're performing, so they can make a trip to San Diego to see them. We're trying to be really aggressive and creative with the dollars we have. Overall, this is not an expensive campaign--not at all as big as the budget we spend on the national cable buy we do every year, which is just about a million dollars. This is somewhere in the \$40,000 range.

**TB:** When Reinders left the ConVis Bureau a year ago, after 15 years, he said the city needed to invest more to "bring Balboa Park to world-class status" and complete Mission Bay Park. Do you agree? And is anything being done in that regard?

**DP:** I think Reint is absolutely right. Balboa Park is the crown jewel of the destination. It's the iconic draw of our destination. And it needs to be invested in. Right now, the focus is on laying plans for the park's centennial celebration in 2015. We're partnering with the city to do some of the legwork in preparation for the marketing of the anniversary of the 1915 Exposition. But the focus and plans that are laid for the centennial are really going to drive the reinvestment in that park.

**TB:** What about private money for the park?

**DP:** That's going to be the key. It's sponsorships; it's getting creative. What we're doing right now is looking at what other similar celebrations have done--looking at everything from Disneyland to what's happened internationally--what models have been used, how they paid for it.

**TB:** What about naming rights?

**DP:** I think all that is fair game. I don't know if the city would have the taste for naming rights--I'm not going to speak for them on naming rights--but I do think we have to put together a menu of options for how we can not just rely on the city for the money but still put together a game plan that's going to do what needs to be done for Balboa Park. This is going to be a situation where it's all hands on deck. We've got to all get together on a summit on Balboa Park and bring in all the leaders and creative minds.

**000435**

**TB:** Okay, I have to ask you this: A generation ago, a fellow named Sam Peckinpah, the director, made one of the most violent movies ever, called The Wild Bunch. Are you any relation to him?

**DP:** He was my father's second cousin, twice removed, I think.

**TB:** So you don't have any of that violence in you?

**DP:** You never know; you don't want to get on my bad side. But you know, that is my daughter's name. Sam Peckinpah. Samantha.

000437

## Revolting Grandmas

Spokespersons:

Mary Quartiano &amp; Muriel Watson

P.O. Box 2051, Bonita, CA 91908

November 22, 2007

San Diego City Council Members

Mayor Jerry Sanders

City Attorney Michael Aguirre

City Clerk Elizabeth Miland

203 C Street

San Diego, CA 92101-4806

First of all Congratulations to Ben Hueso for a job well done at the Coastal Commission's 11-21-07 meeting regarding the Poseidon's proposed desalination project.

This Growing region which depends largely on tourism and conventions for its income doesn't need the reputation of asking residents and visitors alike to drink recycled waste. What do you think would happen when word got out that the source of San Diego's drinking water is water extracted from sewage? What would happen to our tourist and convention business? Moreover, it may even deter sports enthusiasts from attending Foot Ball games and Base Ball games held in San Diego?

Water extracted from sewage is water extracted from sewage no matter whatever moniker suits your fancy for the day. -- In an attempt to make it more palatable to the public-at large, be it Water Re-purification, Reservoir Augmentation, Indirect Potable Reuse. Or, the more direct approach: "Toilet-To-Tap" the public won't accept it as a viable drinking water source.

There is no doubt that San Diego has a serious water problem due mostly to drought, and poor management of resources. The Grandmas suggest that you expand the City's non-potable (not for drinking) uses of recycled sewage water. Or, you could take a page out of Atlanta Georgia's book and conduct a community **PRAYER FOR RAIN**. You might find it a better alternative than doing nothing. Simply put: Toilet-to-tap is not better than doing nothing.

Respectfully submitted,

*Mary Quartiano*

Mary Quartiano

4080 Hancock Street, #4311

San Diego, CA 92110

919-226-6536

*Muriel Watson m.w.*

Muriel Watson

P.O. Box 2951

Bonita, CA 91908

619-479-1125

#209  
12-03-07

**Lujan, Magdalena**

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**From:** Clerk, City  
**Sent:** Friday, November 30, 2007 1:57 PM  
**To:** Atkins, Councilmember; Faucett, Aimee; Faulconer, Council Member Kevin; Frye, Donna; Hueso, Councilmember Ben; Lujan, Magdalena; Madaffer, Councilmember Jim; Maienschein, Councilmember; Peters, Councilmember Scott; Pickens, Sonia; Yepiz, Lauren; Young, Anthony  
**Subject:** FW: City Council Meeting Agenda Comment Form

-----Original Message-----

From: nsuserid@ada.sannet.gov [mailto:nsuserid@ada.sannet.gov]  
Sent: Friday, November 30, 2007 9:11 AM  
To: Clerk, City  
Subject: City Council Meeting Agenda Comment Form

San Diego City Council Meeting Agenda Comment Form Submitted on Friday, November 30, 2007 at 09:10:39

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Name: Michael Freedman

Email: michael@casafamiliar.org

Address: 3833 Via Del Bardo

City: San Ysidro

State: CA

Zip: 92173

Area Code: 619

Telephone: 690-3833

Source: San Diego City Council Meeting Agenda Comment Form at <http://www.sandiego.gov/city-clerk/officialdocs/docketcomment.shtml>

Agenda Item: Item 209: Mon, Dec. 3, 2007

Comments: I see no purpose to including San Ysidro in this money grab by the big hoteliers. We have our own Chamber of Commerce and a Business Association and a Redevelopment Project Area. We don't need to send more money downtown.

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REMOTE\_ADDR: 198.180.31.12

HTTP\_USER\_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30)